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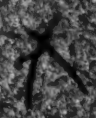

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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1947

SOUTH CHICAGO COKE CO., INC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court is reported in 63 F. Supp. 229. Subsequent opinions of the district court granting and denying in part motions to amend findings of fact and conclusions of law and the judgment (R. 3207), and approving a plan of divestiture of theatres (R. 3461) are not reported. A prior opinion denying the Government's motion for a preliminary injunction is reported in 31 F. Supp. 270. A prior opinion denying in part the Government's motion for a trustee, denying the appellants' motions for dismissal of the proceeding and for vacation of an order requiring them to divest themselves of certain theatres, and granting the appellants' motion

for leave to acquire a certain theatre (R. 419) is not reported.

JURISDICTION

A judgment of the district court was entered on October 31, 1945 (R. 3107). A supplemental judgment was entered on November 13, 1945 (R. 3146). An amended judgment of the district court was entered on March 29, 1946 (R. 3228). An order adopting a plan of divestiture for the purpose of effectuating Section III of the amended judgment was entered on July 5, 1946 (R. 3464). An appeal of the six corporate defendants and three individual defendants was allowed on August 26, 1946 (R. 3755). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1157, 38 Stat. 938, 28 U. S. C. 345). Probable jurisdiction was noted on January 20, 1947 (R. 3755).

QUESTIONS PRESENTED

1. Whether the findings of the district court are supported by the evidence and whether those findings are sufficient to support the conclusion of the district court that the appellants had violated the Sherman Act.

2. Whether the plan of theatre divestiture adopted by the district court was an appropriate means of terminating violations of the appellants and of restoring illegally suppressed competitive opportunities in the area in which motion pic-

ture theatre operations have been monopolized by the appellants.

3. Whether the district court was justified in appointing a trustee to sell theatres named in the plan including those the appellants had agreed to sell themselves within one year after the entry of a consent order on May 19, 1942, but which are still unsold.

4. Whether the procedure by which the particular plan of divestiture embodied in the final judgment was selected was fair to the appellants.

5. Whether the injunction against the appellants' future use of restrictive practices found to have been used by them in the past was proper.

6. Whether certain business letters and memoranda of the major film distributors were properly admitted by the district court and whether, if not, the judgment may nevertheless stand.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

SECTION 1 (as amended by the Act of August 17, 1937, 50 Stat. 693). Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * (15 U. S. C. 1.)

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire

with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * * (15 U. S. C. 2.)

* * * * *

SEC. 4 (as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167). The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * * (15 U. S. C. 4).

STATEMENT

INTRODUCTION

The basic question presented by this suit is whether application of the legal doctrine established in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, to another combination of film exhibitors which had similarly acquired and used monopoly power over the major film supply should result in the granting of similar relief. Since the same basic question is also presented in *United States* v. *Griffith Amusement Co.*, No. 64, this Term, which will be heard with this case and in which we have already submitted our brief, we have not repeated here facts relating to the gen-

eral conduct of the film business stated there. The facts in this Statement are, however, intended to supply an adequate basis for the argument in this brief. They both supplement and contradict the statement in the appellants' brief in important respects. In so far as contradictions are concerned, we rely simply upon the supporting record references set forth herein and the absence or inaccuracy of record references cited in the appellants' brief to support their contradictory statements. The pre-trial proceedings, as well as those relating to the trial itself, have been summarized here because they played an important part in the evolution of the plan of relief adopted in the final judgment.

A. PRE-TRIAL PROCEEDINGS

Within five months after the suit was filed, the Government moved for a preliminary injunction to restrain pending the trial on the merits, *inter alia*, the further acquisition of theatres by the appellant exhibitors, which motion the district court denied in an opinion filed on January 17, 1940, and reported in 31 F. Supp. 270. The motion was supported and defended by affidavits setting forth facts concerning the appellants' alleged acquisition of competitors' theatres through illegal control of the film supply and the court found that the affidavits established a prima facie case (p. 274). It denied the injunction, however, upon the ground that the equities were

with the appellants since there was then no immediate threat by the exhibitor appellants to acquire any specific theatre (p. 276).

Between that date and May 19, 1942, when the case was called for trial, the appellants acquired 16 theatre interests in 13 towns (R. 257–258). In five of these towns, the theatres acquired had been operated in competition with Schine prior to the acquisitions.[1] Several of the former operators of these theatres testified as complaining witnesses at the trial on the merits.[2] As a condition of securing a two-year continuance of the trial date, the appellants agreed, in the temporary order of May 19, 1942 (R. 255–263), to divest themselves of these theatre interests within a period of one year (R. 257), and to submit to injunctive relief which was intended to prevent further violations of the Sherman Act by the appellants pending a trial on the merits; the temporary order also prohibited any further theatre acquisitions without prior court approval (R. 260). The divestiture order provided that the theatres should first be offered at a price equivalent to Schine's investment therein, stated in an appendix to the order, to the operators from whom Schine had acquired them, and that in the

[1] See summaries of evidence relating to Corbin, Ky., Lexington, Ky., Malone, N. Y., Mt. Vernon, Ohio, Rochester, N. Y. Appendix A, pp. 30–35, 62–67, 85–93, 104–107, 133–145.

[2] See Murphy (R. 774–820), Long (R. 548–614), Boumansour (R. 2252–2276) and Schwartz (R. 2025–2054).

event of their failure to purchase within 30 days of the offer, they were to be offered generally to other independent exhibitors at the same price (R. 258–259). The order contained no provision for enforcement other than the keeping of records by the appellants which would disclose to the Department of Justice the extent of compliance, the making of progress reports by the appellants, and the customary retention of jurisdiction to make such further orders as might be necessary (R. 262). The consent order also provided that in the event that at any time after the entry of the order a more favorable order should be entered in any other Sherman Act suit brought against an operator of motion picture theatres, the appellants would have the right to apply for a modification to conform the provisions of the temporary order to the more favorable order (R. 263).[3]

In July, 1943, the appellants filed a report (R. 274–316) of performance and non-performance under the temporary order, which recited the sale of six of the 16 theatre interests which they had agreed to sell by May 17, 1943, alleged that they had been unable to dispose of any of the other 10,

[3] On March 3, 1943, *United States* v. *Crescent Amusement Company*, 323 U. S. 173, was decided in the district court and a judgment entered therein containing provisions less favorable to the defendants than those set forth in the temporary order. This judgment was affirmed by this Court with a modification of one provision, sought by the United States, on December 11, 1944.

although exercising great diligence in this respect, and asked to be relieved of any further efforts to dispose of these theatres upon the grounds (1) that they were letting them deteriorate to the point where they failed to give adequate service to the public since they had no interest in ultimately retaining them under the existing order (R. 287), (2) that the order was harsh and improper because it was more drastic than the consent order entered in *United States* v. *Paramount Pictures, Inc., et al.*, in November, 1940 (18 months before the defendants agreed to the entry of this order) (R. 291), (3) that the 1940 consent decree in the *Paramount* case so effectively restricted the activities of the major distributors that there was no occasion for the entry of this order, in any event (R. 312–313), and (4) that the entire proceeding should be dismissed because the five principal defendants in the *Paramount* case were no longer parties to this suit (R. 313–316).

In February, 1944, the Government petitioned the court for the appointment of a trustee to sell the unsold theatre interests upon the ground that the terms of the order were absolute in requiring disposition of the theatres therein listed and that the appellants had taken the position that they would make no further sales (R. 318–320). An answer was filed asserting that the order by its terms merely required them to offer the theatres for sale in the manner stated, that they had fully discharged their obligation with respect to these

theatres under the order by making unaccepted offers (R. 320), and denying that the appellants proposed to make no further efforts to dispose of the theatres (R. 324). At the same time, they moved to modify the restriction in the order against theatre acquisitions by conforming it to the milder acquisition terms of the 1940 *Paramount* consent decree and to dismiss the suit for want of necessary parties (R. 317–318).

They also moved for leave to acquire a competitor's theatre, the Liberty, in Cumberland, Maryland, which was one of the towns in which they had been ordered to divest a theatre, the Strand, under the temporary order. At the hearing it appeared that Burke, the owner of the Liberty, had complained to the Department of Justice that Schine had persuaded Warner to discriminate against him in Cumberland shortly after Schine acquired the Strand Theatre (R. 334–35), and that the same sort of discrimination occurred with respect to the films of Universal shortly after he had been subpoenaed as a Government witness in 1942 (R. 337).

The trial court disposed of this motion, the Government's petition for a trustee, and the appellants' motions for dismissal of the suit or modification of the order by an opinion rendered on May 4, 1944 (R. 419–424), pursuant to which the following rulings were made:

(1) The appellants' motion for leave to buy the Liberty Theatre was granted (R. 421);

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(2) The appellants' motion to dismiss the suit was denied (R. 421);

(3) The appellants' motion to modify the order so as to release them of their obligation to sell the ten unsold theatres was denied, but the appellants were relieved of the obligation to sell on the terms specified in the 1942 order and were offered a six months' extension of time in which to make these sales (R. 423);

(4) The Government's petition for a trustee was denied "save on the condition that Schine does not elect to accept a continuation of time in which to sell such interests as hereinbefore set forth when a trustee shall be appointed" (R. 423–424).

The court further noted in its opinion:

> It is to be impressed upon Schine that it is the present intent of the Court to see that the order aforesaid directing the sale of these theatres be enforced and that this extra time is given as a leeway, if it chooses to make the sales rather than have them made through the agency of a trustee (R. 423).

The order entered in accordance with this opinion on May 31, 1944, approved the Liberty Theatre purchase "without prejudice to the disposition of said theatre which may be proper upon a final decree in this cause" (R. 425–26), and stayed the requirement of the 1942 order that the Strand Theatre be sold until a further appli-

cation for such a sale by the Government (R. 427).

The order further provided that the six months' extension from May 15, 1942, to sell the remaining unsold theatres, was conditioned upon the filing within fifteen days by the appellants of a notice that "they will accept this extension of time for the purpose of disposing of said theatres within that time" (R. 426), in the absence of which a trustee would be appointed without further notice. It also contained the customary reservation of jurisdiction to enter such further orders as might be necessary to carry out the orders entered and to enforce compliance (R. 427). Notice of acceptance was filed (R. 427), a sale of four of these theatres was approved on October 16, 1944 (R. 2986), and the appellants reported on November 16, 1945 that they had been unable to sell the remaining five (R. 2982). The trial had commenced on May 31, 1944, and the taking of evidence had been concluded when the final report of the appellants was filed.

No further proceedings under the order of May 31, 1944, or other proceedings to enforce, modify, or set aside the divestiture provisions of the 1942 consent order were had until the trial court decided the main litigation on October 8, 1945 (R. 3066). The Government then submitted a proposal for disposition of the unsold theatres ordered divested by the 1942 and 1944 orders

(R. 3239–3240); this proposal was included in the plan of reorganization submitted by it on February 25, 1946 (R. 3236–43), pursuant to the court's direction, of October 31, 1945, to submit such a plan (R. 3107–3109). The appellants' objections to this plan (R. 3243–3311), in so far as they dealt with theatres ordered divested by these orders were based upon the fact that the consent order "shows expressly that no wrong doing of any kind was conceded by the defendants or asserted by the plaintiff" (R. 3285), and that "the terms upon which Schine acquired these theatres were so favorable to the sellers that it was impossible to find another purchaser who would duplicate the terms" (R. 3286). These objections thus again presented considerations for relieving the appellants from compliance with their consent order, which had already been rejected by the order of May 31, 1944 to which order they had consented on June 15, 1944 (R. 427), in order to avoid the appointment of a trustee at that time.

B. THE TRIAL

1. *The ultimate conclusions of the trial court*

In its decision on the merits after a six months' trial and consideration of the evidence and briefs during a further period of almost a year, the court concluded that the appellants had maintained an unlawful combination among themselves and with their affiliated companies to monopolize,

and that they had monopolized and restrained, the licensing of the exhibition of motion picture films in the various cities and towns in which they operate theatres (R. 3226). The court therefore determined that the Government was entitled to a judgment requiring that appellants and their affiliated companies be dissolved, realigned, or reorganized in their ownership and control in such a way that fair competition between them and other theatres would be restored and maintained. It stated that a determination of the question of dissolution, realignment, or reorganization of appellants, and the methods to be employed in the accomplishment of the same should be left to be fixed by the court after further consideration with the parties (R. 3228).

The court also found that the appellants had conspired with each of the major film distributors to restrain and monopolize as aforesaid and that the appellants were also guilty of predatory practices which stifled competition (R. 3226). It concluded that the Government was entitled to a judgment enjoining the appellants (1) from monopolizing the supply of major first run and second run films; (2) from demanding or receiving unreasonable clearance over theatres operated by others; (3) from conditioning the licensing of film in any competitive situation upon the licensing of films in any other situation; (4) from selling or acquiring any theatre interests

pending the further order of the court; (5) from enforcing any existing agreements not to compete, or to restrict the use of real estate to non-theatrical purposes; (6) from the use of threats or deception as a means of inducing a competitor to sell, and from continuing the aforesaid conspiracies (R. 3229–3230).

While the court had before it at the time of its opinion findings of fact and conclusions of law proposed by both parties, it adopted neither, but requested that further proposed findings be submitted in the light of its opinion (R. 3088). The Government thereafter submitted proposed findings of fact and conclusions of law and a proposed judgment, all substantially in the language of the court's opinion (R. 3091). On October 31, 1945, the court adopted findings and entered a judgment such as was described in its opinion and proposed by the Government. (R. 3093–3109). Section III of this judgment provided:

> The defendants and their affiliated corporations be dissolved, realigned, or reorganized in their ownership and control so that fair competition between them and other theatres may be restored and thereafter maintained. The plaintiff and the defendants shall each within 60 days from the entry hereof submit a plan to this Court for such dissolution, realignment or reorganization as they believe will attain this end and serve copies thereof upon op-

posing counsel. Within 30 days after the service of such a plan upon counsel for the parties they shall advise the Court in writing of their objections, if any, to such plans and such counter or substitute proposals for the carrying out of this provision of this judgment as they may desire to submit (R. 3108–3109).

Appellants moved on November 10, 1945, to amend the findings of fact and conclusions of law and to amend the judgment by substituting therefor a judgment of dismissal (R. 3109–3141). This motion, and a later motion by the Government to amend the findings in minor respects (R. 3141–3145) were heard together by the court on February 25, 1946, following the submission of briefs by appellants both in support of their own motion and in opposition to the Government's motion (R. 3146–3206). The court's opinion, rendered on March 8, 1946, provided for amendment of its findings in only minor particulars (R. 3207–3211), and such amended findings of fact and conclusions of law were entered on March 29, 1946 (R. 3212–3230).

The court had, in connection with a postponement of the hearing of the motions to amend the findings, extended until February 25, 1946, the time within which the parties were required to submit plans under section III of the judgment. On February 20, 1946, the Government filed a proposed plan of divestiture with a supporting

memorandum (R. 3236–3243). On February 25, a hearing on the Government's plan and appellants' objections thereto was set down for April 16, a date selected by appellants' counsel (R. 3206). Counsel stated at this hearing that it was impossible for appellants to submit a plan pursuant to section III (R. 3185–3186). On April 1, 1946, appellants filed lengthy objections to the Government's plan of divestiture (R. 3243–3311) and, on April 12, 1946, the Government filed a reply to the objections (R. 3311–3329).

On April 15, appellants filed an appeal from the amended judgment of March 29 (R. 3349) [35] and, on April 16, their counsel appeared and asked for additional time in which to reply to the Government's reply and to submit a plan of their own (R. 3342). The court allowed the appellants until May 7 to file a brief and a plan and allowed the Government until May 14 to answer that plan (R. 3346–3347).

On May 7, 1946, the appellants filed a document entitled "Defendants' Tentative Plan of Realignment of Schine Circuit" and on May 8, 1946, they were heard orally in support of this plan (R. 3364–3378). On May 14, 1946, the Government filed its answer to appellants' plan. On May 23, 1946, appellants filed a motion returnable on May 28, 1946, for an order that testimony be taken "relevant, pertinent and necessary to the consid-

[35] This appeal was dismissed by this Court "for want of a final judgment" on December 16, 1946, 329 U. S. 686.

eration of the method of compliance with Paragraph III of the said judgment" and that a master be appointed for that purpose (R. 3378). In support of this motion, counsel for Schine filed an affidavit and a memorandum and were heard orally at length by the court on May 28, 1946 (R. 3373–3415). At this argument, the appellants submitted an alternative plan of realignment, with a supporting memorandum (R. 3431–3443), which also argued that the trial court then lacked jurisdiction to consider any plan (R. 3435).

On June 7, 1946, appellants filed a motion for a stay of all proceedings with respect to any kind of dissolution, realignment or reorganization until determination by this Court of the Government's motion to dismiss appellants' appeal, and, if the Government's motion should be denied, until final disposition of the case by this Court (R. 3444). In support of this motion, appellants' counsel filed a memorandum and were heard orally (R. 3444–60).

On June 24, 1946, the trial court denied appellants' motions for leave to take further testimony and for a stay, without opinion (R. 3461). On July 5, 1946, the court rendered an opinion (R. 3462–3464), in which it reviewed the various plans which had been submitted by the parties to implement section III of its judgment. It entered an order (R. 3464–3468), adopting a plan summarized *infra* at pp. 31–36, similar in outline to that submitted by the Government but with important modifications of its own. Section IV of

this order stayed the effective date of its plan pending final determination of any appeal (R. 3467–3468). The plan, therefore, has not been put into effect.

2. *The facts underlying the court's conclusions*

The court's findings of fact do not purport to summarize all of the relevant evidence (Finding 27, R. 3224–3225) nor are they concerned with the resolution of testimonial conflicts. They reflect merely the court's view as to the significance in this suit of evidentiary facts which are for the most part beyond dispute by their very nature. Thus the size and character of the appellants' theatre operations, their relationship to one another, the written licensing arrangements they made with the major film distributors, their acquisition of competing theatres, and the covenants not to compete that they took from their operators were all subject to documentary proof. There were some minor disputes as to the substance of conversations between complaining witnesses and appellants and between such witnesses and distributor representatives, but there could be, and was, no serious dispute as to what the ultimate effect on these witnesses was of the appellants' extraordinary and arbitrary control over the major film supply which resulted from the appellants' enormous circuit buying power.

The court found that the "defendants together control the largest independent theatre circuit in

the country" (R. 3213), that major film buying was done through "master agreements" negotiated for the entire circuit (R. 3215), and that by "combining the open and closed towns in Schine's deals with the distributors" Schine could "dictate terms" and "obtain preferences" (R. 3215). The principal means by which Schine used this power to control and suppress the competition of theatre owners operating in opposition to the combination were found to be "arbitrarily depriving independents of first and second run pictures, securing unreasonable clearances, making threats to build or open closed theatres to prevent construction or operation by independents, lowering admission prices, obtaining rental concessions, restricting independents who sold to Schine as to periods and places of operation, making long-time franchise agreements covering the 'Circuit'" (R. 3215).

The ensuing findings merely single out illustrative instances in which such means were used. A summary of the undisputed facts in the record follows, and a comprehensive statement of the evidence relating to the specific towns covered at the trial is set out in alphabetical order in Appendix A to this brief.

(a) Description of the Appellants

The corporate appellants are Schine Chain Theatres, Inc., organized as a holding and service company in 1920 and five of its wholly owned

subsidiaries. They are Schine Theatrical Co., Inc., an operating company organized in 1926; Schine Enterprise Corporation, a service company organized in 1935; Schine Lexington Corporation, an operating company organized in 1936; Schine Circuit, Inc., a service company organized in 1937; and Chesapeake Theatre Corporation, a holding company organized in 1938. The first five of these corporations are New York corporations. The sixth is a Maryland corporation (R. 40–41, 58, 222).

The six corporate appellants own stock in over 100 other corporations, through which the business of owning and operating theatres is conducted in six States. The stock interest owned in all of the realty corporations is 100 percent. The stock interest held by the appellants in corporations operating theatres is for the most part 100 percent. In some ten instances, appellants' stock interest in such corporations is 50 percent, in one instance 25 percent (R. 221–222).

The individual appellants, J. Myer Schine, Louis Schine, and John A. May, are the principal officers in the appellant corporations. They hold additional offices in various operating subsidiaries and are the principal and substantial stockholders in the parent corporation, Schine Chain Theatres, Inc. While the corporations in which the appellants own 50 percent or less generally have local operating management representing the owners of the remainder of the stock,

the film buying is handled under so-called booking contracts made with the appellants or one of their wholly owned subsidiaries. The appellant corporations and all of their subsidiaries are hereinafter collectively referred to as Schine or the Schine circuit (R. 214–216, 246–247).

(b) How the Schine Circuit Functions

The principal office of all of the appellant corporations and their subsidiaries is at Gloversville, New York. The individual appellants, J. Myer Schine, Louis Schine, and John May, have been the principal executive officers and have had general supervision of the operation of the circuit. The program for acquisition of theatres was in the immediate charge of various regional or district managers, but Myer Schine and John May at times participated directly in acquisition negotiations (F. 6, R. 3214–3215).

The major film buying negotiations for the appellants' circuit were handled by George Lynch (F. 6, R. 3215), who signed substantially all of the franchises and master agreements (listed *infra* at pages 28-29) on behalf of the circuit.*

While the Schine circuit did negotiate individual deals for towns acquired during the season and sometimes made circuit deals for less than all of the towns in the circuit, generally the circuit

* Neither Lynch, nor any other circuit official save J. Myer Schine directly implicated by verbal testimony or written evidence as actors in the restraints, monopoly, and conspiracy charged and found was called as a witness by the appellants.

deal took the form of a master agreement or franchise which included in one deal substantially all of the towns in the circuit (see *infra* p. 28). In some cases the deal took the form of an agreement which outlined the general terms of the transaction, including special licensing provisions applicable through the circuit and enumerating the towns and seasons covered, supplemented by "deal sheets" setting forth the more specific terms for individual towns (Ex. W–3, R. 4429–4455, 1166; Ex. W–4 (1)–(2), R. 4456–4557, 1166). Sometimes it merely consisted of a series of license agreements for each of the circuit's towns, executed at about the same time on the distributor's regular printed form, supplemented by riders or typewritten modifications on the form itself (Exs. P–168–P–238, R. 5829–5897, 1170).

(c) The Monopoly Position of the Appellants

At the commencement of the suit Schine had a financial interest in over 150 theatres.[5] They operated theatres in more than 70 towns located in the western and northern parts of New York State; the northern part of Ohio, the eastern part of Kentucky, the Eastern Shore of Maryland, and

[5] The trial court in its findings (F. 3, R. 3213) stated that Schine operated 93 theatres in 73 towns, apparently referring only to theatres directly and continuously operated by Schine. There is uncontradicted evidence supplied by the appellants to the effect that Schine then had an interest in at least 150 theatres (Int. Ans. 17, R. 223–245), (appellants' final report of July, 1943, p. 16, R. 274); (hearing of June 17, 1946, R. 3444).

Delaware (F. 3, R. 3213). The appellants control the largest independent[6] motion picture theatre circuit in the United States. In a single season, 1939–40, Schine paid a total of $1,647,000 in film rentals to six major film distributors (F. 3, 4; R. 3213–3214).

From 1920 through 1941, appellants acquired an interest as purchaser or lessee in 175 theatres and, in addition, some 42 separate parcels of real estate for theatre purposes or connected with such purposes (F. 2, R. 3213). Most of this growth occurred after 1931, since which time interests in 118 theatre corporations have been acquired (F. 3, R. 3213).

A tabulation of Schine's expansion since 1928 in terms of open and closed towns follows:[7]

Year	New York		Ohio		Kentucky		Maryland		Delaware		Virginia	
	O	C	O	C	O	C	O	C	O	C	O	C
Aug. 1928	12	14										
Aug. 1935	12	20	3	4								
Aug. 1939	12	26	3	13	3	4	0	5	0	2		
Nov. 1941	11	28	2	15	2	6	2	2	0	2	0	1
July 1943	10	29	2	14	3	5	2	5	0	2	0	1

[6] This term is used to identify circuits not affiliated with the defendants in the *Paramount* suit, pending before this Court, No. 79, this Term.

[7] Data in this tabulation is based on R. 2572–2575, Defts. I. A. 17–A, 18, and 22 (R. 223–253), and divestiture report of July, 1943 (R. 274), pursuant to May 19, 1942, order. November, 1941, is date of interrogatory information. August, 1939, is date suit was filed.

The foregoing expansion by progressive elimination of competitors was accompanied by the making of express agreements not to compete in the future with the eliminated independents. In Paris (Appendix A, p. 116 128), the independent agreed not to compete for fifteen years in the future although he had never operated the incompleted theatre that Schine acquired or any other theatre in the town. When the same independent sold out in Lexington (Appendix A, p. 62 67), he agreed not to compete for the same period of time in a group of other Kentucky towns in which Schine operated but in which he had never even attempted to operate. In Ilion (Appendix A, p. 57 59) and Malone (Appendix A, p. 84 93), the independents agreed not to compete for ten years in towns within a radius of 35 miles and 20 miles, respectively, although they had never operated outside of those two towns. These agreements obviously had no relation to the preservation of the goodwill of the business sold but were simply intended to protect Schine from competition. This was also true of the agreement taken at Amsterdam (Appendix A, p. 24 6), where the theatre acquired was promptly dismantled and closed.

In addition to agreements made in connection with outright acquisitions such as those referred to above, independent competition was also eliminated by the use of partnership arrangements whereby all theatres in a town or competitive area

would be operated as a unit with management supplied by the independent, the films bought by Schine for a fee under a booking contract, and the profits from the entire operation split between Schine and the independent through an equally divided ownership of an operating corporation. Such pooling occurred in the following towns and the corporations named operated the pooled interest:

Ballston Spa, Mechanicville, Whitehall, and Granville, New York (Benton Schine Corporation); Fostoria, Ohio (Fostoria Theatre Corporation); Wooster, Ohio (Kinney-Mott Corporation and Wooster Theatres, Inc.); Medina, Ohio (Medina-Princess Corporation); Norwalk, Ohio (Norwalk Theatres Corporation); Shelby, Ohio (Schine Shelby Corporation); and Tiffin, Ohio (Schine Tiffin Corporation and Seneca Theatres, Inc.) (Int. Ans. 17–B, C; R. 246). Similar partnership arrangements were originally made at Amsterdam (Appendix A, p. 2) and Auburn (Appendix A, p. 10), New York, Ashland and Delaware, Ohio, through Mamyer Corporation, Schine Ashland Corporation, and Schine Delaware Corporation, respectively, which were later converted into 100 percent Schine operations as a result of the acquisitions of the partners' stock by Schine (Int. Ans. 17A, 19; R. 223–245, 248–252).

The appellants' control over independent competition was further extended by similar pooling

agreements made with affiliates of the major distributors. Agreements of this class directly eliminated competition between the appellants and the theatre operations of the distributors involved, and also had the indirect effect of further restricting the opportunity of independent competitors of the appellants in dealing with such distributors. Thus, the Schine-Paramount pool in Lockport (Appendix A, p. 75) was used as an excuse by Paramount for refusing to deal with Dickinson, and the Schine-RKO pool in Syracuse (Appendix A, p. 160), was directly responsible for the inability of Wallace and Martina to get major product to operate the Strand and Empire in Syracuse, while these theatres were outside the pool.

In addition to such pooling, Schine further extended its control over competitive operations by contracting with theatres in which it had no proprietary interest, as at Harlan (Appendix A, p. 54) and Bowling Green (Int. Ans. 17-B, 17-C, R. 246) to buy and book their films for a flat fee or percentage of the gross receipts. The effect of such agreements, as in the case of pools, was to augment Schine's buying power and make sure that films were bought for the independent interests involved in a manner which would protect Schine.

In many towns Schine retained possession of closed or partially operated theatres as a means

of intimidating competition and monopolizing the film product (F11 (c. i), R. 3217, 3129). The obligations assumed by the appellants in renewing such leases up to May 19, 1942, totalled more than $400,000, as shown by the following table:[8]

Theatres closed	Amount	Theatres Operated Part Time	Amount
Opera House, Kent, Ohio	$18,000	Strand, Bellefontaine, Ohio	$36,400
Opera House, Bellefontaine, Ohio	36,000	Pontiac, Ogdensburg, N. Y.	36,000
Crescent, Newark, N. Y.	33,200	Hippodrome, Little Falls, N. Y.	13,800
Bijou, Piqua, Ohio	13,220	Southern, Bucyrus, Ohio	7,200
Richardson, Orwego, N. Y.	58,500	Opera House, Wooster, Ohio	6,000
Temple, Ilion, N. Y.	8,750	Hi-Art, Lockport, N. Y.	55,000
Opera House, Wooster, Ohio (since 1938).	16,000	Jefferson, Auburn, N. Y.	90,000
Roxy, Fostoria, Ohio	7,500		
Total	193,170	Total	243,100
			193,170
		Grand total	436,270

In every competitive town in which Schine operated, except Buffalo and Rochester, N. Y., where the major distributors operated theatres, and possibly in Pikeville, Kentucky,[9] Schine had all or the majority of first run product of the major distributors, year after year, and Schine's competitors were not given an opportunity to

[8] Int. Ans. 17, 18, 23 (R. 223–245); Ex. 83 (R. 5193, 2516); Ex. 85 (R. 5195, 2522); Ex. 646 (R. 5212, 1338); Ex. 647 (R. 5214, 1347); Exs. 910–912 (R. 5226–5229, 2514); Ex. 913 (R. 2514—Index p. xl but not printed); Exs. 914–917 (R. 5230–5236, 2514–2515); Exs. 920–945 (R. 5239–5263, 2516–2520); Ex. 947 (R. 5265, 2521); Ex. 960–962 (R. 5266–5273, 2542); Exs. 982–984 (R. 5275–5277, 2567); Ex. 985 (R. 4399, 2568).

[9] The record does not show the product distribution in Pikeville, Kentucky, where Schine acquired a theatre interest in 1939.

negotiate for such product.[10] In numerous situations Schine, through the device of selective contracts, kept films of distributors away from Schine's competitors without being committed to buy or play such pictures.[11]

John May, one of the individual appellants and a policy-making official of Schine, admitted that it was the definite policy of Schine to acquire all of the first run theatres in any particular community which Schine entered (R. 362–363). The long-term film licensing agreements, called franchises, by which Schine tied the first run exhibition of the major distributors' films to its theatres for several seasons at a time are summarized in the following table:

Distributor	Date approved	Seasons covered	No. of towns licensed	No. of other towns over which clearance is taken	Exhibit No.
Loew	Oct. 1, 1936	1936–37 1937–38 1938–39 1939–40	49	67	618 (R. 2524, 3952–4077).
Fox	Aug. 5, 1936	1936–37 1937–38 1938–39	44	(?)	F–1—F–123, (R. 1179, 2577–79, 4961, 5908–6056).

[10] See town summaries, Appendix A, pp. 2–193, and Exs. 122–160 (R. 2537, 5327–5363); Ex. 312 (R. 2604, 3844); Ex. 313 (R. 2537, 3844); Ex. 618 (R. 2524, 3952); Ex. 981 (R. 2547, 5735); Ex. C–181 (R. 1190, 5061–5139); Ex. F–157 (R. 1182, 6089); Ex. P–163 (R. 2605, 3798); Ex. P–213 (R. 1170, 5873); Ex. R–10 (R. 1183, 5806); Ex. U–137 (R. 1191, 4649); Ex. U–207 (R. 1191, 4724); Ex. W–3 (R. 1166, 4429–55); Ex. W–6 (6) (R. 1165, 5741); Ex. W–34 (R. 1167, 4565–4644).

[11] See town summaries, Appendix A, for Amsterdam, Auburn, Corbin, Little Falls, Lockport, Malone, Norwalk, and Rochester.

Distributor	Date approved	Seasons covered	No. of towns licensed	No. of other towns over which clearance is taken	Exhibit No.
Fox	Aug. 10, 1939	1939-40 1940-41 1941-42	58	91	F-125—F-214, (R. 1182, 6057-6145).
Warner	Aug. 22, 1938	1937-38 1938-39 1939-40	56	81	W-3, W-4 (1-99) (R. 1166, 4429-55, 4456-57).
Paramount	Sept. 27, 1940	1939-40 1940-41	59	76	P-168—P-238, pp. 1-10, (R. 5820-5897, 1170).
Columbia	Oct. 17, 1938	1938-39 1939-40	63	(1)	C-100 (R. 1188, 4971), C-101 (R. 1188, 4973), C-102 (1-61) (R. 1189, 4975-5056).
Columbia	Nov. 19, 1940	1940-41 1941-42 1942-43	61	112	C-181 (1-79) (R. 1190, 5061-5139).
RKO	Aug. 15, 1938	1938-39 1939-40 1940-41	58	(2)	R-37 (1-83) (R. 1187, 4886-4948).
Universal	June 27, 1939	1939-40 1940-41 1941-42	59	(3)	U-207 (1-89) (R. 1191, 4725-4813).

[1] Same as preceding season. These deal sheets referred to clearance on the preceding season's contracts. Such contracts, except for particular town situations, are not in evidence.
[2] Deal sheets—Clearance same as Master Agreement Nov. 20, 1936.
[3] Deal sheets—Clearance not shown.

Agreements establishing blanket terms for the circuit for a single year, called master agreements, were made with Loew for 1940–41 (Ex. 981, R. 2547, 5653–5735); United Artists for 1933–34, 1934–35, 1935–36, 1936–37, 1937–38, 1938–39, 1939–40, and 1940–41; Exs. 121–161, R. 2537–8, 5327–5363 (some not printed but by stipulation may be referred to, R. 3553).

The trial court not only found that each of the major distributors conspired with the appellants

to violate Sections 1 and 2 of the Sherman Act, but its findings also contain some reference to specific instances of illicit cooperation (Fs. 9, 11, 16–27, R. 3215–3216, 3217–3219, 3220–3225). Schine's franchises and master agreements with these distributors are alone sufficient to support the findings of conspiracy, but they are also supported by the persistent discriminations in dealing or refusing to deal with Schine's competitors set forth in the town summaries in Appendix A to this brief. These discriminations may be summarized as follows: (1) loss by the independent of an established run without any opportunity to negotiate for its continuance;[12] (2) the independents' inability to negotiate for runs not bought by Schine;[13] (3) subjecting the independent to unreasonable clearance;[14] and (4) permitting Schine's prior run theatres to charge the same or lower admission prices than Schine's subsequent run competitors were bound to charge.[15]

The only factual dispute created by the appellants' brief concerns the precise extent of these effects and the extent to which a particular com-

[12] See Bucyrus, Ohio; Watertown, N. Y.; Lexington, Ky.; Auburn, N. Y.; Van Wert, Ohio; Amsterdam, N. Y.; Appendix A, pp. 24–26, 185–191, 62–67, 10–16, 178–184, 2–6.

[13] See Malone, N. Y.; Auburn, N. Y.; Geneva, N. Y.; Little Falls, N. Y.; Appendix A, pp. 85–93, 10–16, 50–51, 68–74.

[14] See Little Falls, N. Y.; Ilion, N. Y.; Watertown, N. Y.; Appendix A, pp. 68–74, 57–59, 185–191.

[15] See Lexington, Ky.; Corning, N. Y.; Appendix A, pp. 62–67, 36–45.

petitor of Schine was injured by them. Their widespread existence stands undisputed.

3. The plan of divestiture embodied in the final judgment

The judgment of divestiture entered on July 5, 1946, is not self-executing in this case since it merely outlines a proposed future method of divesting the appellants of certain theatre interests through action of a trustee for sale, who must present every sale to the court for approval upon reasonable notice to the Government and to the appellants "to the end that they may have a fair opportunity to bring to the attention of the trustee and the court such objections as they deem appropriate" (R. 3467). A stay pending appeal has so far prevented the appointment of a trustee and, as a result of the same stay, the appellants have not yet even had to file their election as to the theatres they desire to retain in the situations where the court has ordered the divestiture of all of their theatres except one or two to be selected by them (R. 3468). The towns in which such divestiture is to occur are: (1) 33 small towns in which they may retain one theatre of their selection (R. 3464–65), (2) 4 larger towns in which they may retain two theatres of their selection, and (3) Rochester, New York, where they may elect to retain two of four named neighborhood theatres (R. 3465).

The dissolution of pooling agreements in two small towns may be effected either by return of the theatres to the respective interests contributing them to the pools in question, or by a sale of the appellants' stock in such corporations, and that in Syracuse, with RKO, is made subject to the terms of the decree in the *Paramount* case (R. 3465–3466). The only specific theatre interests ordered divested by the judgment of July 5, 1946 are those remaining unsold under the consent order of May 19, 1942 (R. 3466). The number of theatres to be divested in the 33 towns in each of which Schine is to retain one theatre total 47, and the number in the four towns in each of which it is to retain two, total 9. Assuming that Schine elects to retain the best theatres in these towns, those to be divested will in every case be inferior to those retained, and, in all except three of these towns, one or more of the divested theatres will be those which have been kept closed or operated only on a part-time basis.[16]

[16] The facts as to the size and operating condition of the theatres in the towns where such selections are to be made are as follows:

1. Towns where all except one theatre is to be sold

Amsterdam, New York: Regent, 925 seats; Rialto, 1380 seats; Strand, 1086 seats; Orpheum. Regent has been operated part-time. Schine acquired control and equipment of Orpheum in 1941 and the theatre was condemned in 1941 (R. 223, 3261).

Ashland, Ohio: Palace, 634 seats; Ashland, 1200 seats; Ohio, 307 seats; Opera House. Opera House was dismantled

There are no directions as to terms of sale of any of these theatres except to sell them "as

in 1941. Ohio is in part-time operation (R. 233, 3262, 1947 Film Daily Year Book, p. 995).

Athens, Ohio: Athena, 893 seats; Court, 267 seats; Ohio, 299 seats. Court closed part-time (R. 233–234).

Bellefontaine, Ohio: Holland, 1319 seats; Strand; Opera House. Strand has generally been kept closed. Opera House has been kept closed (R. 234).

Bucyrus, Ohio: Bucyrus, 1097 seats; Southern, 450 seats; State, a small theatre. State has been converted to commercial use and Southern has had part-time operation (R. 234, 3266).

Cambridge, Maryland: Arcade, 933 s[illegible]te, 833 seats; Grand. Grand has been kept clos[illegible]

Canandaigua, New York[illegible] seats; Playhouse, 1070 seats. Lake has been kep[illegible]ed (R. 224, 2647–48).

Corning, New York: Fox, 1933 seats; State, 906 seats; Palace, 398 seats. State has been kept closed (R. 225, 243).

Cortland, New York: State, 1632 seats; Temple, 588 seats; Cortland. Temple has had part-time operation. Cortland (Opera House) has been kept closed and leased for commercial purposes (R. 225, 3269).

Delaware, Ohio: Strand, 777 seats; Star, 266 seats. Star has been partially operated (R. 234).

Easton, Maryland: Avalon, 616 seats; Easton, 646 seats (R. 240).

Geneva, New York: Geneva, 1868 seats; Regent, 1055 seats; Temple. Temple was regarded as obsolete and kept closed and replaced by Geneva Theatre, but has been remodeled and reopened. Regent was in part-time operation (R. 226, 3270).

Herkimer, New York: Liberty; Richmond, 891 seats. Liberty has been kept closed and is obsolete (R. 227).

Ilion, New York: Capitol, 1238 seats; Temple. Temple has been kept closed and is obsolete (R. 227).

Kent, Ohio: Opera House, 598 seats; Kent, 943 seats. Opera House has been kept closed (R. 235).

Little Falls, New York: Rialto, 1200 seats; Hippodrome,

rapidly as possible upon such terms and to such purchasers as this court may approve to the end that the theatres disposed of may operate in competition with the theatres retained by the defend-

555 seats. Hippodrome has been kept closed part-time (R. 227, 228).

Lockport, New York: Rialto, 1484 seats; Hi-Art, 1062 seats; Palace, 1698 seats. Hi-Art has been kept closed part-time (R. 228).

Malone, New York: Malone, 1181 seats; Plaza, 610 seats (R. 228).

Maysville, Kentucky: Russell, 700 seats; Washington, 500 seats; Hollywood, 300 seats. Hollywood has been kept closed (R. 239).

Middlesboro, Kentucky: Manring, 965 seats; Brownie, 418 seats (R. 2391).

Newark, New York: Capitol, 1210 seats; Crescent. Crescent has been kept closed and is obsolete and unuseable (R. 227).

Norwalk, Ohio: Forum, 537 seats; Moose, 838 seats; Norwalk 1111 seats. Forum has been kept closed. Moose has had part-time operation (R. 236).

Ogdensburg, New York: Strand, 1311 seats; Pontiac, 460 seats. Pontiac has been kept closed part-time (R. 229).

Oneonta, New York: Oneonta, 1217 seats; Palace, 866 seats; Strand. Strand was kept closed and has been sold and converted to commercial use (R. 229, 3278).

Paris, Kentucky: Bourbon, 634 seats; Paris, 932 seats. Bourbon has been kept closed (R. 239).

Piqua, Ohio: Piqua, 958 seats; Miami, 712 seats; Bijou, 375 seats. Piqua has had part-time operation. Bijou has been kept closed (R. 236).

Ravenna, Ohio: Ravenna, 375 seats; Ohio, 871 seats. Ravenna has been kept closed (R. 236).

Richmond, Kentucky: Madison, 987 seats; State, 666 seats; Alhambra. Alhambra has been converted into a store. State has been kept closed part-time (R. 239).

Salamanca, New York: Andrews, 735 seats. Schine built

ants" (R. 3466). The sales of the remaining unsold theatres under the 1942 order are to be completed within six months, and the remaining sales are to be completed within two years, but both limitations are subject to such extensions with respect to specific sales as the court may grant for good cause shown upon the petition of the trustee or any party (R. 3467).

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and opened another theatre in August, 1942, the Seneca, 1108 seats (R. 231, 3281, 1947 Film Daily Year Book, p. 991). Seneca Falls, New York: Strand, 943 seats; Seneca. Seneca has been kept closed. Equipment was removed by former operator (R. 231, 3282).

Tiffin, Ohio: Ritz, 1322 seats; Grand, 750 seats; Tiffin, 825 seats. Tiffin has been kept partially open and Grand has been kept closed (R. 237).

Van Wert, Ohio: Van Wert, 802 seats; Strand, 710 seats. Strand has had part-time operation (R. 237).

Watertown, New York: Avon, 1376 seats; Olympic, 1649 seats; Palace, 594 seats. Palace has been kept closed part-time (R. 233).

2. Towns where all except two theatres are to be sold

Auburn, New York: Jefferson, 1400 seats; Palace, 850 seats; Auburn, 1800 seats (R. 223).

Lexington, Kentucky: Ban Ali, 1375 seats; Kentucky, 1257 seats; State, 895 seats; Strand, 1255 seats; Opera House, 1188 seats; Ada Meade, 668 seats. Ada Meade and Opera House were required to be sold under the consent order of May 19, 1942 (R. 238, 258).

Oswego, New York: Strand, 950 seats; Capitol, 696 seats; Oswego, 1704 seats; Richardson; State. Richardson and Oswego have been kept closed and Strand has had part-time operation (R. 229–30).

Wooster, Ohio: Wooster, 1123 seats; Opera House, 1100 seats; Wallace; Wayne, 679 seats. Opera House has had part-time operation. Wallace has been dismantled (R. 237).

The trustee's power is strictly limited to the purposes of sale and he is completely excluded from any part in the operation of the appellants' theatres. No compensation is fixed, but his compensation and expenses are to be paid "in such amounts as the court may from time to time approve, from the proceeds of sales made by him," which proceeds are to be deposited in a special account and disbursed only upon further orders of the court (R. 3467).

The only remaining provision of the plan is the provision for court approval of any future theatre acquisitions by the appellants in the same terms as those decreed by this Court as appropriate in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, and a restriction against buying or booking films for theatres in which the appellants own no financial interest in substantially the same terms as those approved by the expediting court in *United States* v. *Paramount Pictures, Inc.*, No. 79 before this Court, this Term.

SUMMARY OF ARGUMENT

I

The record here presents precisely the same kind of violations of law as those charged and proved in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173. In both cases the gist of the offenses found was a concerted use of film buying power to expand the theatre operations of a

combination of exhibitors by the suppression of the competition that would otherwise be supplied by theatres outside the combination. The main difference between the records made here and there is that here the film buying combination or circuit in question possessed greater buying power and monopolized theatre operations in larger communities. The franchises and master agreements between the appellants and the major film distributors which prevented the independent opposition from competing with the circuit were of the same character and made with the same distributors in both cases. The expansion of the circuit in both cases was further aided by agreements not to compete in the future, taken from competitors who sold out, which were on their face so extensive as to be unrelated to the protection of the goodwill of the business sold. As in *Crescent,* the court here found that the appellants had not only attempted to monopolize, but had actually succeeded in monopolizing the motion picture theatre business in a substantial number of towns by acquiring competing theatres. It also found, in this case, that such monopolization was a product of a conspiracy between the circuit and each of the eight major film distributors to achieve these results. The findings here as to the illegality of appellants' combination were compelled by the application of the legal principles established by the *Crescent* decision to the undisputed facts in this record.

II

The court in this case properly ordered a dissolution, realignment, or reorganization of the appellants' business since the propriety of such relief had been carefully considered and expressly approved by the *Crescent* decision. While the divestiture in the *Crescent* case was limited to stock interests, the divestiture of theatre properties ordered here is intended to have the same effect, that is, diminution of the illegally acquired and used film buying power. In employing a theatre divestiture plan to implement this judgment, the court here reached a far less drastic result that would have been reached by a literal application of the *Crescent* formula of stock interest divestiture, since the stock interests here involved extended to more than 100 separate corporations as opposed to the nine there involved. The plan here, in essence, proposes only to dilute Schine's circuit buying power principally by selling one or more theatres in towns where Schine now has a complete monopoly of all theatre operations or owns all of the first run theatres. The plan also includes the divestiture of theatres which the appellants agreed to sell by May, 1943, under a consent order entered in 1942, but which are still unsold.

The scope and character of the plan is not only squarely supported by the *Crescent* decision, but also falls within the general pattern of plans for

divesting assets to restore competition embodied in prior antitrust judgments.

The court properly appointed a trustee to sell all of the theatres involved in the plan, in view of the established failure of the appellants to demonstrate that they could and would make sales as ordered without further judicial intervention. The appointment of a trustee is in accord with established equity practice in antitrust suits and the trustee's powers are so limited and subject to such continuous judicial supervision that no prejudice to the appellants can result from his activities.

III

The other provisions of the judgment merely enjoined Schine from committing in the future specific acts by which it was found to have unreasonably and illegally restricted the competition of other theatre operators in the past. Appellants' challenge to the supporting findings is limited to a showing that certain subsidiary findings are wrong in minor respects. The court's ultimate finding that such violations had been committed is supported by undisputed evidence. Some of the injunctive provisions were in the same form as provisions which were sustained in the *Crescent* case and all are of the kind sustained by prior judgments of this Court.

IV

The documentary evidence challenged by the appellants as improperly admitted was both competent and material. The documents were clearly admissible, both as business records and as statements of persons who "associated themselves together in the prosecution of a common plan or enterprise." *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 249. Since the appellants themselves offered testimony purporting to summarize the course of business in question and draw conclusions as to its reasonableness, this underlying evidence as to what the course of business actually was could in no event have been properly excluded from the court's consideration. Even if all of this evidence was found to be erroneously admitted, the unchallenged admitted evidence supports the ultimate findings on which the judgment is based.

ARGUMENT

I

THE APPELLANTS' VIOLATIONS OF THE SHERMAN ACT ARE CONCLUSIVELY ESTABLISHED BY THE APPLICATION OF THE CRESCENT DOCTRINE TO THE UNDISPUTED FACTS

The basic pattern of illegal acquisition and use of circuit buying power charged and proven here is identical with that disclosed in *United States* v. *Crescent Amusement Co.,* 323 U. S. 173. The principal difference between the record there and

here is that in this case the appellant combination was not merely a large circuit, but the largest domestic circuit of exhibitors not owned by a major distributor, and that the illegal discriminations in question occurred in larger towns spread over a wide area. Schine's use of film franchises made with the major distributors was similar to *Crescent's,* but correspondingly more extensive.

As in *Crescent,* the appellants were shown to have combined the film purchases of numerous theatres in which they own entire or partial financial interests, located in both closed [17] and open towns, for the purpose and with the effect of excluding smaller theatre operating competitors from any opportunity to license major films upon a competitive basis. 323 U. S. at 179; see *supra,* pp. 21–22. The film licensing restrictions so imposed on these competitors were similarly effective in inducing a substantial number of them to sell out to, or merge their theatre interests with, the appellants. 323 U. S. at 181; see *supra,* p. 23.

The actual theatre operating monopolies [18] which such acquisitions frequently produced, were fur-

[17] Towns in which all of the motion picture theatres are under common ownership or management.

[18] Towns in which film licensing discriminations were followed by acquisitions which eliminated all theatre operating competition were Amsterdam, Bellefontaine, Corbin, Geneva, Fostoria, Lexington, Little Falls, Lockport, Malone, Medina, Mt. Vernon and Norwalk. See Appendix A, *infra,* pp. 2–6, 16–23, 30–35, 50–51, 52–53, 62–67, 68–74, ~~75–84, 85–93, 95–102,~~ 71-73, 84-92, 94-102 104–107, 109–155.

ther cemented, as in *Crescent*, by the making of agreements not to compete in the future with the former operators, which, as in *Crescent*, in some instances not only excluded the former competitor from the motion picture theatre business in the town in which the business sold had been operated for a number of years, but also from the motion picture business in the wider areas in which the appellants operated theatres, 323 U. S. at 181; see *supra*, p. 24. Such express agreements in each case afforded conclusive evidence that the purpose of the appellants was not so much the protection of the goodwill of the business acquired as exclusion of the seller from the business at any point where he might offer competition to the appellants. 323 U. S. at 183; *supra*, p. 24.

While the variety of supplemental devices used to restrict theatre operating competition, such as threats to reopen closed theatres or construct new ones, etc., was wider than that disclosed in *Crescent* they were of essentially the same character. Apparently the only distinction asserted by appellants between the general character of the evidence in this record and that in the *Crescent* record is that there some of the corporate appellants were only partially owned by the principal corporate appellants, while here the appellant corporations are a unified whole since each corporate appellant is a wholly owned subsidiary of the principal corporate appellant

(Br. 70–71). Viewing the film licensing activities of the appellants in both cases as a whole, there is no significant factual difference, since these appellants' financial interests in the theatres for which Schine bought films were also only partial in a number of instances. See *supra*, pp. 20–21. In any event, this Court has but recently held that "the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act. A restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent." *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 227; see also *General Motors* v. *United States*, 121 F. 2d 376, 404 (C. C. A. 7), certiorari denied, 314 U. S. 618, rehearing denied, 314 U. S. 708.

The appellants' chief contention with respect to the question as to whether they have violated the Sherman Act seems to be that the trial court's ultimate conclusion of guilt was in error because it made errors in subsidiary findings of fact relative to some of the discriminations in specific competitive situations, which were allegedly induced largely by improperly admitted evidence (Br. 86–214). The propriety of admitting the evidence in question is shown in a later section of this brief.[19] We shall turn now to a brief dis-

[19] See *infra*, pp. 92–98.

cussion of the evidentiary support for the trial court's findings of fact and conclusions of law.

Paragraphs 2 and 3 of the conclusions of law (R. 3226) are the ultimate conclusions of the trial court that the appellants violated Sections 1 and 2 of the Sherman Act by monopolizing, attempting to monopolize, combining and conspiring unreasonably to restrain trade and monopolize the business of operating theatres and the supplying of major films. Paragraph 4 of the conclusions of law (R. 3226–3227) lists means used by the appellants to achieve these ends. The conclusions are plainly supported by the findings of fact (see especially findings 1 to 15, R. 3212–3220; and we are content to rely entirely upon our statment (*supra,* pp. 21–30) and the town by town summary of the evidence in Appendix A (*infra,* pp. 2–193) to demonstrate that these findings are amply supported by competent evidence. It is sufficient to note here that assuming the exclusion of all of the challenged documentary evidence, the remaining documentary evidence and undisputed oral testimony would have compelled the same ultimate findings as to liability, since, as in *Crescent,* this other evidence

> established the position of the distributors and their relations to the theatres involved, what the distributors in fact did, the combination of the defendants, the character and extent of their buying power, and how it

> was in fact used. This other evidence was sufficient to establish the restraints of trade and monopolistic practices; the purpose, character, and extent of the combination are inferable from it alone. Thus even if error be assumed in the introduction of the letters and reports, the burden of showing prejudice has not been sustained. (p. 184.)

The defense in this case paralleled the defense in the *Crescent* case in endeavoring to show that the appellants had superior financial and other resources which would, in any event, have enabled them to triumph over their independent opposition without resort to the illegal restraints they admittedly did employ for this purpose (Br. 33–35). They also rely upon the fact, conceded in *Crescent* and here, that the illegal restrictions did not, in any case, prevent the opposition theatres from securing a supply of inferior film adequate to keep them open on some policy (Br. 214). The restraints in both cases were thus only partial restraints in the sense that they were limited to the prevention of a competitive distribution of the best available films on the best runs, and that this was only one among several factors tending to hamper the ability of the opposition theatres to stay in business against Schine. Nothing has been shown to suggest any reasons why these defenses, which were carefully considered and rejected in *Crescent* (323 U. S. at p. 183) should prevail here. Thus we will address

the major portion of this brief to the form and extent of the divestiture relief granted because we deem that to be the only question here presented which is of sufficient substantiality to justify a review of this case by this Court.

II

THE TRIAL COURT'S PLAN OF DIVESTITURE IS A PROPER METHOD OF DEALING WITH THE APPELLANTS' MONOPOLY POWER

The main questions raised by the appellants as to the propriety of the divestiture relief in this case are, first, a claim that the court was wrong in ordering any dissolution, realignment, or reorganization of the appellants' business whatsoever, and second, that assuming the validity of such an order, the means chosen by the district court to implement it were too drastic. We propose to show in the ensuing argument that the order of dissolution, realignment, or reorganization was a necessary consequence of the particular violations found, and that the plan chosen by the court to make its general direction effective is open to question only upon the ground that it may not in fact be sufficiently stringent to achieve its lawful purpose.

A. A judgment of dissolution, realignment, or reorganization is well established judicial relief against monopoly power such as appellants were found to possess

The trial court made its order of divestiture with full knowledge of the injunctive relief it had

already granted, as well as the injunctive relief established by the expediting court's decree in the *Paramount* case, which necessarily would affect trade practices in the industry generally. It apparently felt, we think rightly, that these injunctions could not afford the necessary relief in this case. In reaching this conclusion, the court was simply following this Court's decision in the *Crescent* case. As we have already shown, the nature of the offenses in the present case and in the *Crescent* case is precisely the same. In each the defendants had combined and by the same technique acquired an unlawful monopoly power. Since the propriety of the dissolution relief was expressly considered and approved in that case, the granting of similar relief in the present case was virtually compelled. In disposing of the *Crescent* defendants' argument against the dissolution granted there, the Court noted that dissolution of unlawful combinations created in violation of the Sherman Act was routine relief. But the appellants here suggest that since the cases cited in the *Crescent* opinion in support of this proposition (p. 189) dealt with specific mergers or stock acquisitions which were found to be illegal when made, this is the only kind of combination subject to dissolution relief. They say that *Crescent* is such a case and *Schine* is not because there is no proof that Schine Chain Theatres, Inc. illegally acquired its stock control of the other corporate appellants.

The appellants' argument, that the form of the unlawful combination or the particular manner in which it was created could be a defense to dissolution, cannot survive the immediately following explicit language of the *Crescent* opinion (323 U. S. at 189–190):

> Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience. That principle is adequate here to justify divestiture of all interest in some of the affiliates since their acquisition was part of the fruits of the conspiracy. But the relief need not, and under these facts, should not be so restricted. The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instrumentalities in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity for these exhibitors to continue to act in combination against the independents. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future.

The approach to divestiture relief reflected in the foregoing language was necessary to sustain

the *Crescent* judgment because that judgment was not limited to divesting Crescent's stock in other defendant corporations which was found to have been illegally acquired, but was extended to divestiture of defendants' stock interests in other non-defendant corporations for which Crescent had merely bought film and which together with the defendant Crescent formed the illegal film buying combination. Another defendant in that case, also a member of the combination, was Rockwood Amusement Company, which had no stock affiliation with Crescent, but was tied to it by common film buying and a mere community of interest. Rockwood was also effectively divorced from Crescent, although there was no suggestion that any illegality attended the origin of this community of interest. Thus, the *Crescent* opinion and holding stand unequivocally for the proposition that it is both proper and necessary to do more than merely grant negative injunctive relief against an illegal film buying combination which has achieved and has exercised monopoly power,[20] and that in granting such relief, a court is not bound to limit itself to the disruption or dissolu-

[20] Such a judgment would merely preserve the status quo of the defendants' illegal monopoly by judicial decree. As was said in a well known divestiture case, "the mere removal of incidental evils and practices would tend to legalize the monopoly." *United States* v. *Eastman Kodak Co.*, 230 Fed. 522, 523 (W. D. N. Y.), appeal dismissed, 255 U. S. 578.

tion of ties which were themselves illegal when created."

In entering its preliminary judgment in this case the court deliberately gave the parties the greatest possible flexibility in working out an adequate remedy for dealing effectively with the monopoly power of the appellants' combination by not limiting such relief to dissolution. Had the *Crescent* formula of dissolving the unlawful combination by complete separation of the various corporate

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[11] In *United States* v. *Pullman Co.*, 50 F. Supp. 123, 53 F. Supp. 908 (E. D. Pa.), affirmed on other grounds, 330 U. S. 806; the Court did not hold that the combination of the three related companies was itself the violation found, but that the monopoly power exercised through the combination had to be broken up by a divorcement of the combined interests. But in any event, appellants assert that dissolution or divestiture cases fall into two classes (a) cases in which monopoly has been found to be vested in and exercised by a single corporation and (b) cases in which monopolies or restraints have been carried out by a combination, where the combination itself has been found to be in violation of the Act. We deny the relevance of such a classification. But in any event appellants contend that they are a single business entity (App. Br. 4). If this is so, Schine should come within classification (a). The court found (Concls. 2, 3, R. 3226) that appellants violated Sections 1 and 2 of the Sherman Act "in that they have maintained an unlawful combination among themselves by means of which they have unreasonably restrained trade * * *"; and that they "have maintained an unlawful combination among themselves and with their affiliated corporations and have monopolized * * * through the unlawful combination * * *." These conclusions are broader than the corresponding conclusions (Concls. 10, 11) in the *Crescent Amusement* case, and if the *Crescent* case belongs in (b), as put there by appellants, room should be made to include this case.

entities involved been literally applied here, the result would have been wholly to dismember the appellants' circuit, since its theatre holdings were distributed among more than 100 corporations as against the nine involved in *Crescent*. The alternative form of the district court's order deliberately invited a less drastic solution of the problem presented by Schine's combination, and the Government accordingly submitted one which was necessarily different in its mechanics from the *Crescent* plan because of differences in the form of the Crescent and Schine combinations. Since the plan adopted does not dissolve the appellants' combination, but merely envisages a possible neutralization of the appellants' circuit buying power by sales of theatres in towns where they hold a dominant position as theatre operators, it may be open to criticism as inadequate to perform the task traditionally assigned to such plans by the past decisions of this Court, but it was clearly within the general pattern of past antitrust judgments dealing with similar combinations.

B. The plan of reorganization approved by the court was a proper exercise of its power to implement section III of its judgment

1. *The sole ground on which the court's plan is open to criticism is its failure to give positive assurance of any substantial diminution of the appellants' buying power.*—The plan of divesti-

ture adopted by the trial court is intended to dilute Schine's buying power by creating opportunities for competition with Schine, but, even when fully executed it would still leave Schine in a preferred competitive position in every town in which it operates. In at least 17 of the 33 towns in which Schine is required to divest itself of all except one theatre, it owns only two, and in a substantial number of these towns one of the two has been kept closed for substantial periods of time or operated on a weekend or other part-time policy.[22] In 25 of these towns, most of the theatres Schine would have to dispose of are of this sort, and in most of them the difference in seating capacity and in physical condition between Schine's best theatres and the other theatres is substantial. See, *supra*, pp. 32–35. Thus, the only opportunity that the plan adopted by the court presents to potential purchasers of the theatre sold is a chance to operate an inferior theatre with an inferior policy or no past actual operating policy in competition with superior theatres with an established policy, owned by a powerful circuit which still retains a number of closed one-theatre towns. Whether or not such an opportunity will actually result in the creation of operating competition against Schine in any of these towns is at this moment wholly speculative.

[22] Appellants describe such theatres as "marginal or submarginal" theatres (App. Br. p. 4).

The plan submitted by the Government not only contemplated the disposition by the appellants of many more theatres than the court ordered sold, but was also intended to remove the important competitive advantage which the court's plan permits the appellants to retain through continued ownership of the only theatre in each of 17 towns. The court apparently rejected such divestiture on the assumption that it would have penal characteristics not present in the divestiture of some theatres while permitting the appellants to retain one or more others in the same community. The asserted justification for divestiture of these one-theatre closed towns was wholly remedial in that such towns, in Schine's hands, represented a continuing threat to competition throughout the circuit in view of the past extensive use of such closed situations to secure unfair advantages where competition existed. Under the Government's plan, it was contemplated that in those towns theatres would henceforth be operated by owners who would be dependent for success upon their skill in theatre operation [22] rather than upon arbitrary control of the major film supply. Schine's removal from these towns would thus have opened these towns to potential competition if the new venture failed to meet their entertain-

[22] Appellants' statement in their brief, p. 34, that the towns Schine went into were, by and large, towns which no other "skilled" theatre operator had gone into has no support in the record.

ment needs and a substantial reduction in appellants' buying power would have been assured since a theatre in any one of these towns is obviously a more attractive purchase than any of the sales contemplated in the plan adopted.

In an effort to diminish Schine's domination in certain local areas maintained by the concentration of Schine's buying power in such areas and by clearance restrictions over other towns in the vicinity,[24] the Government's plan also proposed to require Schine to elect, as to each group of towns

[24] Aside from the undisputed fact that in many towns Schine had all the theatres, the record shows large area concentration of theatre holdings. This fact, as pointed out to the court below, was the very basis of part F of the Government's plan of divestiture (R. 3237–3238). In the northwestern and northeastern parts of New York State, Schine has theatres in most towns of substantial size. Schine has theatres in the following counties in that area: Niagara, Erie, Cattaraugus, Wyoming, Monroe, Wayne, Ontario, Yates, Steuben, Seneca, Cayuga, Onondaga, Cortland, Chenango, Oswego, Jefferson, St. Lawrence, Franklin, Otsego, Herkimer, Fulton, Warren, Saratoga, Montgomery, and Washington. A glance at an atlas will readily disclose the contiguity of the area and its size. It has all or most of the theatres in the county seats of the following counties in that area: Niagara, Ontario, Steuben, Yates, Cayuga, Cortland, Chenango, Herkimer, Franklin, Jefferson, and Washington. In Ohio, appellants' theatres are for the most part concentrated in the north central part of the state and in almost all of the county seats in the counties where they are located. In Kentucky, Schine's holdings are concentrated in the eastern part of the state and are in most of the county seats in that area and in Maryland on Maryland's eastern shore (R. 223–245).

within 25 miles of another, in which one it desired to remain as a theatre operator. The court also rejected this provision.

We prosecuted no appeal from the court's decision since we felt that the choice made was within its discretion and that if in actual practice the plan failed to achieve the result intended, the measures which would achieve it might be adopted upon a proper showing at a later date. If, however, this Court should undertake to recast the terms of the plan now in effect, we respectfully submit that consideration should be given to the plan advanced below by the Government and the supporting reasons for its adoption there presented (R. 3239–43).

The appellants assert that even the limited divestiture which the court below contemplated was imposed as a penalty (App. Brief 57–59). The short answer to this assertion is the court's own affirmation of its motivation in its opinion of July 5, 1946, in the following language:

> The purpose of this and like suits by the government, under its announced policy, is not for the purpose of penalizing defendants but rather the "Restoration of free enterprise and open competition amongst all branches of the motion picture industry." In order to effectuate this policy the divestiture of theatres, as here-

inbefore stated, is deemed necessary.[25] (R. 3462, 3463–64.)

2. *The appellants' failure to offer the court a bona fide plan for dissolving the combination left the court with no practical alternative but the adoption of a plan of reorganization intended to neutralize the illegal combinations' monopoly power.*—In inviting the parties to submit plans for effectuating Section III of its judgment and providing for the submission of objections by each to such plan as the other proposed, the trial court was following procedure calculated to give the appellants' the maximum opportunity to secure a solution of the problem presented in terms favorable to them. If any action was to be taken with respect to the complex corporate organization of the appellants by way of a redistribution of assets among them or creation of new corporations to receive and operate such assets, the cooperation of the appellants' would normally be

[25] This, we submit, in itself would suffice to repudiate appellants' claim that the court gave relief of divestiture as a penalty. The appellants apparently have fixed upon a casual remark made by the court in the course of the colloquy between him and appellants' counsel at a hearing on May 28, 1946 (R. 3386). The remarks of the court at other points during that same hearing (R. 3383–3415) make it clear that it did not have in mind divestiture as a penalty. The particular remark made by the court to which appellants have referred was made with reference to the towns where Schine had only one theatre, as to which no divestiture was decreed.

indispensable, since the adoption of any such plan would generally involve decisions which the appellants themselves would have to make before the court could act intelligently.

The original position of the appellants in this case was that they would submit no plan whatsoever because they felt that any dissolution, realignment or reorganization would be improper and result in a reversal of the judgment by this Court. They relied on this position and their objections to the plan proposed by the Government until after the time fixed by the court below for submission of plans had expired. In a last minute reversal of this prior position, appellants finally submitted an alleged plan of dissolution which, on its face, broke their circuit into three parts, for each of which the film buying would be carried on separately. Unity of ownership was, of course, unbroken by the proposed transfer of two of its three parts to each of the wives of the two principal individual appellants, and this plan could scarcely have been regarded as a bona fide compliance with the direction in Section III of the court's judgment even if submitted at an earlier date. The plan did nothing but change the form of the appellants' control of the combination without in substance dissolving, realigning or reorganizing the combination in any way which would carry out the court's announced objective to restore and maintain fair competition

between the appellants' theatres and others in the future.[26]

In such circumstances, the court's consideration of a plan was, as a practical matter, necessarily confined to one of the general character submitted by the Government. This plan was conceived in terms of theatre divestiture under judicial supervision rather than internal corporate reorganization. Having given the appellants every opportunity to devise a plan of a different character, the court was clearly not bound to evolve a third type of plan when the appellants failed to offer one adequate to perform the assigned task, and its failure to do so certainly was not an abuse of discretion.

3. *In adopting a plan of theatre divestiture, the court was bound to look to future competition with the circuit as a continuing combination.*— The violations found were not isolated instances of illegal theatre acquisitions in specific localities. On the contrary, they were based upon a buying power derived from the size of the circuit as well as possession of a number of closed towns, used to obtain maximum competitive advantages in every town in which the circuit operated. Under those circumstances the primary duty of the court was to neutralize that power. It was es-

[26] Appellants' plan appears to be similar to that unsuccessfully used by Standard Oil to avoid the effects of an adjudication of violations of state antitrust laws. See *Standard Oil Co.* v. *United States*, 221 U. S. 1, 38–40.

sential, therefore, that any plan of divestiture should view the circuit as a whole rather than its position in any particular town. Once the court decided to allow appellants to continue to function as a unit, it was obviously necessary to approach the problem of restoring the opportunity to compete with the appellants' circuit, as such, by diminishing the power of the circuit as a whole to control the exhibition of films in any town. The court was, therefore, fully justified in adopting a plan intended to create competition for the circuit generally rather than in specific situations with which the evidence had dealt.[27] In this light there is nothing anomalous about the court's ordering divestiture in towns where specific predatory practices had not been shown. Such treatment was particularly appropriate here since the court permitted the appellants to retain theatres which would have been divested upon any theory of divestiture as a remedy appropriate to particular theatre situations in which the evidence had shown specific predatory practices.

[27] The court's own experience with the consent order of 1942 was a fairly conclusive demonstration that competition which would substantially neutralize the circuit buying power of the appellants' combination could not be achieved by efforts to restore to their former position specific competitors of Schine who had been unlawfully eliminated from the business. Of the ten former operators of theatres acquired by the appellants subsequent to the filing of the suit who were given the opportunity to repurchase their theatres, and resume competition with Schine, only two availed themselves of this privilege.

The court's primary concern in adopting a plan of divestiture was properly with ensuring future competition, not with redressing past wrongs. The latter is the primary function of an action at law for damages; the former the primary function of an equity proceeding such as that at bar.

This Court has recently held that an antitrust decree should properly "deal with the future economic condition of the enterprise as well as past violations." *International Salt Co.* v. *United States,* 68 Sup. Ct. 12, 17, fn. 10. The plans for divesting assets approved in prior antitrust judgments have frequently placed them in the hands of new owners for the express purpose of creating new competition. Where this has been done, the defendants' control of these assets has been regarded as sufficient basis for the court's action without reference to illegality attendant upon their acquisition or prior use. See discussion of the *Crescent* case, *supra,* pp. 48–50.

In *United States* v. *American Tobacco Co.,* 221 U. S. 106, the Court directed the entry of a decree dissolving the combination and creating from the elements of the dissolved combination a new condition "in harmony with * * * the law" (p. 187). The judgment entered redistributed the business properties of the illegal combination in a manner calculated to create competition. 1 Decrees & Judgments in Federal Anitrust Cases 162, 165. There is nothing in the opinion or

judgment to suggest that the redistribution was limited to parts of the combination found to be infected by any illegality more specific than their prior existence as a part of the unlawful combination.

In *United States* v. *Corn Products Refining Co.*, 234 Fed. 964 (S. D. N. Y.), the judgment provided that the "combination shall be forever dissolved, and to that end and in order to restore competitive conditions and to bring about a situation in harmony with law, the factories, business, and assets of the Corn Products Refining Company shall be divided in such manner and into such parts of separate and distinct ownership as shall be necessary for that purpose." 1 D & J 440, 443. The final decree provided that only persons or corporations intending to continue the business should be eligible as purchasers of the plants divested for this purpose." 1 D & J 433.

In *United States* v. *Cement Securities Co.* (D. Col., Eq. No. 7295, 1922) a judgment entered on December 13, 1924 decreed that the combination was unlawful and should be dissolved and, to that end, that the plants, business, and assets of Cement Securities Co. should be divided into separate and distinct ownerships, so as to bring about competitive conditions and a situation in harmony with the law. It was required that the defendants' interest in a plant and one-half interest in six acres of land containing raw mate-

rial deposits at Concrete, Colorado, be disposed of with reasonable diligence and subject to the approval of the court to a person, firm, or corporation intending to continue the business.

In *United States* v. *International Harvester*, 274 U. S. 693, 705; 1 D & J 337, 339, the Harvester Company was required to divest itself of almost five thousand retail dealerships in order to enable other manufacturers to secure retail outlets so as to be able to compete with Harvester.

The foregoing cases show that divestiture plans looking to the creation of future competition are an established form of relief. While they do not exhaust those which have actually divested assets to create competition, they seem adequate to refute the unsupported assertion at page 50 of appellants' brief that the courts "have never ordered the divestiture of property for the purpose of 'creating competition'." *Hartford Empire Co.* v. *United States*, 323 U. S. 386 and *United States* v. *National Lead Co.*, 332 U. S. 319, are cited by appellants at the same page for the proposition that divestiture will not be ordered where injunctive relief alone is sufficient, but in both those cases divestiture, in the only sense in which it has been ordered here, was also ordered. The defendants in those cases were not compelled to offer their patents free, but they were compelled to make them available to all comers for a reasonable royalty to be fixed by the court. They were thus actually divested of the patent monopoly privi-

leges they had previously enjoyed and they were so divested with respect to some patents possessing no taint of illegality except actual or possible inclusion in the defendants' unlawful combination.[25] If the plan approved in this case purported to divest Schine of its theatres without any compensation, it might present a parallel to the royalty-free licensing relief rejected in those cases, but there is not the slightest suggestion in any action of the court below that any theatre must be sold for less than a price reasonable under all the circumstances.

4. *The appointment of a trustee to execute the plan of divestiture is not prejudicial and is fully justified by the appellants' record under the consent order and established equity practice.*—Appellants object to the appointment of a trustee to carry out the divestiture provisions of the court's order. Since the trustee's powers are strictly limited to negotiating sales, there can be no prejudice to the appellants from such an appointment, unless more vigorous effort to sell the theatres

[25] In *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, the defendants had control over a large number of patents through which they dominated the glass container industry. With respect to many of such patents, there was no evidence of particular wrongdoing; many of the patents were issued on applications of defendants' own inventors. There was proof of combination with other patents in the creation and exercise of monopolistic power. This Court ruled that the defendants should be divested of their right of exclusivity not only as to all the patents in the pool, but also as to future patents.

than would be made by a party having a substantial financial interest in not selling them is regarded as prejudicial. The court's judgment that a representative of its own was essential to make the plan work was based not only upon the record made at the trial but upon a pre-trial record partially summarized at pages 5–12 of this brief, showing reluctant [29] and unsuccessful efforts by the appellants to dispose of theatres they agreed to sell under the 1942 consent order. The unfulfilled obligation of the consent order made it necessary for the district court to appoint a trustee in any event to divest the appellants of those theatres acquired after the suit was filed which they had agreed to sell by May 19, 1943, but which were still unsold when the judgment in this case was entered.

The trial court, on the basis of its own experience with the appellants' "voluntary" efforts to sell theatres, was entitled to exercise its discretion to appoint a trustee, not only to give assurance that its order would be carried out expeditiously, but to avoid repeated litigation as to whether or not the appellants had honestly attempted to make sales which they had not the slightest financial incentive to make. In framing final relief in this case, the established inability of the appellants to make sales by voluntary

[29] For appellants' position with respect to the burden imposed upon their organization by the duty themselves to sell the theatres named in the consent order, see R. 284–286.

means over an extended period of time pointed clearly to the necessity for the appointment of an officer of the court to perform this task.

The provisions for the sale of theatres are eminently fair to the appellants. Before a sale is made, it must be approved by the court. The parties are given an opportunity to present objections of any nature to the trustee and to the court. The trustee is to be paid out of the proceeds of the sales.

A court of equity has inherent power to appoint a receiver or other court officer to carry out its decrees (*Wiswall* v. *Sampson*, 14 How. 52, 63) and in antitrust cases it is well settled that, where circumstances warrant, receivers or other officers of the court may be appointed to carry out the decrees of the court. *United States* v. *Union Pacific R. Co.*, 1 D. & J. 208, 217; *Columbus Packing Co.* v. *State*, 100 Ohio St. 285, 126 N. E. 291 (1919). See *United States* v. *American Tobacco Co.*, 221 U. S. 106, 188; *United States* v. *Great Lakes Towing Co.*, 217 F. 656, 659 (N. D. Ohio), appeal dismissed, 245 U. S. 675.[30]

[30] In a number of unreported antitrust cases, court officers have been appointed to dispose of the property of defendants. Under paragraph 4 of the consent decree entered on February 27, 1920, in *United States* v. *Swift & Co.* (S. Ct. D. C. Eq. No. 37623), Swift & Co. was required to dispose of its interests in any plants or manufacturing establishments engaged in producing or dealing in any of the commodities enumerated in that paragraph. The defendants susequently asked for an extension of time and the United States filed an answer requesting the appointment of a trustee to take possession of

5. The procedure by which the plan was evolved was fair to the appellants and their claim of a stale record is without merit.—Appellants urge that divestiture was decreed on a stale record and that the trial court should have taken testimony as to the current competitive situation in each of the towns in which divestiture was ordered. There is no merit in this suggestion.

The claim of staleness based upon lack of evidence in the record as to the up-to-date competitive situations in each of the towns affected has no application to the theory on which the court has proceeded. The plan adopted by the court was by its terms not intended to remedy specific competitive evils in the communities directly affected. It was intended to offer assurance that there would be a fair opportunity to compete with the combination in the future in any area in which it chooses to operate. In essence, the court required Schine to divest itself of at least one theatre in those towns where Schine had at least two theatres and had either a com-

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the stockholdings of the defendants in such plants or manufacturing establishments for the purpose of disposing of the same. The court denied defendants' petition and granted the Government's request for the appointment of a trustee. Similar orders were made in the same case with respect to other property. In *United States* v. *Reading Co.* (E. D. Pa., Eq. No. 1095), the court, in a decree of June 6, 1921, appointed trustees to take certain steps to carry out the decree. Trustees were also appointed to dispose of certain stock interests of the defendants in *United States* v. *Fox Theatre Corp.* (S. D. N. Y., Eq. No. 51112).

plete monopoly of all theatres in the town or a complete monopoly of all first-run theatres. Thus the court sought to restore competition in each of the more sizeable monopolized towns, while leaving Schine undisturbed in communities in which the only theatre was owned by Schine.

The court's decision in which it directed the entry of a judgment embodying a plan of dissolution, reorganization, or realignment was rendered in October, 1945, and the judgment embodying the plan was not entered until July of the following year. In the meantime, the appellants had been given repeated opportunities not only to be heard with respect to their objections to the plan proposed by the Government but in support of a plan of their own, notwithstanding the fact that no such plan was even offered by them until May, 1946. Under these circumstances, their complaint that the record was too stale to permit a proper plan to be put into effect seems not *bona fide* but designed to prolong evasion of adequate relief.[31] If the procedure advocated by them were adopted, that is, appointment of a master to take testimony with respect to each of the towns in which divestiture was ordered, the final judgment would be rendered even more remote from the trial on the merits.

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[31] The reliance on the *Paramount* consent decree (App. Br. 62) is obviously without merit since that decree was entered in 1940, before the *Crescent* case was decided, and was superseded, in 1946, by a litigated decree now before this Court in Nos. 79–86, this Term.

On April 1, 1946, the appellants filed a lengthy document entitled "Defendants' Objections to Plaintiff's So-Called Plan of Reorganization" (R. 3243–3311). In it the appellants discussed the situation with respect to the towns in which divestiture was ordered. They discussed the existing situation, in some instances representing to the court changes which had occurred since the trial and historical facts not brought out at the trial. The Government did not object to this presentation, although its accuracy in several respects was challenged (R. 3311–3329). These objections show the nature of the evidence Schine proposed to introduce (Cf. R. 3381). None of it suggested any substantial change in the extent of the circuit's buying power or in the theatre situation in any particular town. Therefore, even if all the additional purported f cts presented therein were true, they would not call for any change in the order of divestiture.

Insofar as future competitive developments in any of the towns in which divestiture was ordered may become relevant to the disposition of the theatres involved, the court's appointment of a trustee for sale, with each sale subject to court approval, is the only method by which up-to-date information as to the competitive situations affected could be made available to the court without protracted litigation. Even so, the unlimited opportunity granted by the terms of the order to

the appellants to object to every sale on any ground will not prevent the appellants from attempting to litigate the issues foreclosed by the court's decision every time a sale is proposed, if past experience is a reliable guide. No attempt to foreclose the mere possibility of such litigation was proposed by the Government since the plan's success must depend, in any event, upon judicial firmness in execution, which no procedural rules can supply.

We submit that litigation must have an end and that vague claims of changed conditions do not merit the reopening of a judgment at any time, let alone within a few years after it has been entered. *Chase Nat. Bank* v. *Cheston,* Nos. 178–193, this Term. If the contrary were true, final judicial disposition might often be prevented altogether by the mere fact that it takes time. Cf. *I. C. C.* v. *Jersey City,* 322 U. S. 503, 514–519, and cases cited; *United States* v. *Pierce Auto Freight Lines,* 327 U. S. 515, 534–536. We think it clear that if the appellants have any substantial claim of exoneration from the decree with respect to any particular theatre or town, they are at liberty to invoke the trial court's reserved powers under the decree (R. 3230) for consideration of such claim. We know of no basis for any such claim.

6. *The trial court properly restricted future acquisitions of theatres by Schine.*—Paragraph III of the trial court's order of July 5, 1946, pro-

hibits the defendant from acquiring "a financial interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition" (R. 3467). In this case, as in the *Crescent* case, acquisition of theatres was a primary element in the growth and misuse of the appellants' buying power, as well as a means of eliminating and deterring competition. In that case, the Court held that the district court there erred in denying this form of relief upon similar findings of violations and its inclusion in the judgment here was compelled by that decision.

III

THE INJUNCTIVE PROVISIONS ARE ALSO PROPER AND NECESSARY ELEMENTS OF RELIEF

Appellants have assigned as error each of the injunctive provisions in the court's judgment on three identical grounds (Assigns. 100–110, R. 3499–3501). They say, first, that the injunctive provisions are not warranted by the evidence; second, that they are too general and indefinite in their terms; and third, that they are broader in scope than is appropriate. We consider, seriatim, the several injunctive provisions in the light of these contentions.

A. *Monopolization of first or second run product*

Paragraph 1 of Section II of the judgment prohibits the appellants from monopolizing the

supply of major first-run films in any situation where there is a competing theatre suitable for first-run exhibition thereof, and from monopolizing the supply of second-run films in any situation where there is a competing theatre suitable for second-run exhibition. This provision was responsive to the court's findings, among others, that the appellants arbitrarily deprived independents of first-run and second-run features; that this was a principal means by which Schine obtained its unlawful monopoly; that Schine was able to monopolize first-run in a number of towns and first neighborhood runs in Rochester; and that, in a number of instances, it used its monopoly control of film product to induce a competitor to sell out to it (Fngs. 8, 9 (a), 11 (e), 11 (g), R. 3215–3219).

In an effort to refute these findings, appellants explore at length in their brief (pp. 94–137) the situation with respect to product in some sixteen competitive towns as to each of which the district court found that Schine had fully or partially monopolized product to the exclusion of Schine's competitor. Invariably, the explanation is offered that Schine and the independent each competed for product and that in the competitive race the distributor preferred Schine because he had a superior theatre facility, or was an old customer, or for some such similar reason. A highly selective recitation or distortion of the facts of

record are used by appellants in this challenge to the court's finding. These distortions are made apparent in the town summaries in Appendix A, which marshall the detailed evidence which supports the court's findings with respect to each town. We merely point out here the inherent improbability of Schine's position. They would have this Court believe that with respect to each of such sixteen towns it always developed because of fortuitous circumstances favoring Schine that the distributor determined on the merits of each situation to sell to Schine. The plain fact is that Schine, with its massed buying power, was almost universally successful in dictating to distributors its own decision as to the product it desired in competitive towns. The fact of this monopolistic power and its abuse in stifling competition becomes more apparent as appellants extend their lengthy explanation of how it always developed that Schine prevailed in efforts to obtain product from the distributors.

Independent exhibitors were well aware of Schine's power to monopolize major film product and Schine not infrequently brought pressure to bear upon independents whom it sought to buy out, by express reference to its power to monopolize film licensing.[32]

The findings and evidence thus clearly required precisely the type of relief which the court af-

[32] See summaries for Norwalk, Seaford, Shelby, and Van Wert. Appendix A, pp. 109–115, 150, 155–159, 178–184.

forded. Next to the provisions for divestiture, the relief granted against monopolization of first and second run films is the provision of the judgment best calculated to eliminate restraints on existing and potential competition. An essential requisite to the success of the divestiture plan is knowledge on the part of purchasing independents that Schine can no longer monopolize the film supply in these towns by any means whatsoever.

There is no substance to the claim of appellants that the prohibition against monopolization of first and second run product in competitive towns is too vague. What the Sherman Act itself forbids among other things is "monopolization" and both criminal and civil actions are commonly based on this proscription. The decrees entered in cases in which monopoly has been found to exist not infrequently prohibit such monopoly. See e. g., *Swift & Co.* v. *United States*, 276 U. S. 311, 327–328; *United States* v. *First National Pictures, Inc.*, 51 F. 2d 552 (S. D. N. Y.); *Dorfman* v. *Federal Trade Commission*, 144 F. 2d 737 (C. C. A. 8); cf. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 69–70, 79–81.[33]

[33] In Paragraph 2 of the decree of December 18, 1946, entered in the case of *William Goldman Theatres, Inc.* v. *Loew's, Inc.* (E. D. Pa. Civil No. 2877), the defendants were restrained from "monopolizing or attempting to monopolize the exhibition of feature motion pictures on first run in the City of Philadelphia; or from entering into, engaging in, or consummating, directly or indirectly, expressly or impliedly, by means of discrimination in prices and terms, or by other

In *United States* v. *Crescent Amusement Co., supra,* appellants contended that certain provisions of the decree similar to those here in question were too vague and failed to provide an ascertainable standard of conduct. This Court responded that the decree was as specific as it could

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means or device, any such monopolization or any such restraint of interstate trade or commerce." The decree contains other provisions of a similar breadth.

The judgment entered in *Theatre Investment Co.* v. *RKO Radio Pictures, Inc., et al.*, 72 F. Supp. 650 (W. D. Wash.), prohibits the defendant motion picture exhibitors and distributors from

"11 (a) monopolizing or attempting to monopolize the exhibition of feature motion pictures on third run in the City of Seattle, or from entering into, engaging in or consummating, directly or indirectly, expressly or impliedly, by means of discrimination in prices and terms, or by any other means or device, any such monopolization or any such restraint of interstate trade or commerce."

Paragraph 6 of the decree in *United States* v. *The Pullman Company et al.* (C. C. H. Trade Reg. Serv. 57,242) provides:

"The Corporate Defendants, their successors and their respective officers, directors, agents, and employees, and each of them, and all persons and corporations acting or claiming to act on behalf of them or any of them, shall not enter into, participate in, or perform, any contracts, agreements, arrangements, or understandings, with each other, with any railroads, or with any manufacturers or owners of railroad rolling stock, or with any of them, for the furnishing, servicing, manufacturing, or selling, of railroad sleeping cars, the individual or collective effect of which will be unreasonably to lessen competition between the Corporate Defendants and their successors, the railroads, and manufacturers or owners of railroad rolling stock, or any of them, or to create a monopoly, in the furnishing, servicing, manufacturing, or selling, of railroad sleeping cars."

be made and that, under such circumstances, any burden involved in its interpretation is an inescapable one which must be borne by those who violated the law (323 U. S. at 188). It is difficult to see how the prohibition here could be made any more specific without spelling out a ready means of evasion, and the appellants offer no alternative phrasing.

B. *Unreasonable clearance*

The trial court enjoined Schine (Amended Judgment, sec. II, R. 3229) from demanding or receiving "clearances" over other theatres which unreasonably restrict their ability to compete with Schine. Clearance is an agreement between an exhibitor and a distributor whereby the distributor undertakes not to permit another exhibitor to play a picture until a specified time after it has been played by the first exhibitor. Schine has objected to this provision of the judgment on the ground that there was no evidence of unreasonable clearance. A further objection is that if any such provision is retained here it should be conformed to the judgment in the *Paramount* case, and should read as follows:

> Demanding or receiving clearances over theatres operated by others in excess of what is reasonably necessary to protect the defendants in the runs licensed to them. * * *

The district court found that obtaining unreasonable clearances was a principal means by which Schine had obtained its monopolistic control; that Schine was able to secure unreasonable clearances year after year in many towns; and that "the record is replete with interdepartment communications between major film representatives which recognize the unreasonableness of the clearances given to Schine at his demand" (Figs. 8, 9 (b), 17, R. 3215, 3216, 3220–22).

In their brief (pp. 146–148) the appellants assert that the court apparently failed to realize that most of the clearances which it found unreasonable were those which operated only against Schine's own theatres. They refer specifically to Seneca Falls, Little Falls, Bucyrus, Kent, Norwalk, Tiffin, Fostoria, Corning, and Watertown for the proposition that when inordinately lengthy clearances were given, Schine had the only theatres in the town. In making this argument, appellants overlook the fact that the clearances are an effective means of keeping potential competition out of the towns and that most of the clearances extended over other towns than those in which Schine had theatres.[34] Most

[34] Appellants point out errors in the court's findings as to specific clearances. That such errors are insignificant when contrasted with those appellants cannot impugn is shown by appellants' failure to challenge the accuracy of the findings they now attack (R. 3096–7, 3101–02) in their motion to amend the findings (R. 3109–41). Appellants, moreover, cannot, as to some of these towns, correctly state that there

of these clearances, moreover, are part of franchise deals which set the distribution and exhibition pattern in a particular town for several years. The court further found that Schine obtained unreasonable clearances over towns in which it did not operate, in towns distant 10 to 20 miles,[35] and in towns in which there were no

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was no opposition at the time such clearances were given. In Seneca Falls, a 120-day clearance was given Schine by one or more of the distributors from at least the 1935–36 season through 1941–42 season (Exs. F–101 (29), R. 2545, 6026–27; F–37, R. 2577, 5943; F–178, R. 1182, 6110; 958, R. 2537, 4393). In Little Falls, 90, 115, and 120-day clearances were obtained by Schine since at least 1933–34 from one or more of these distributors (Exs. 635G, R. 5453–54; W–8 (7), R. 1164, 5782; W–3, R. 1166, 4429; 672C, R. 5483; 339F, R. 5397; 339G, R. 5398; P–210, R. 1170, 5870; R–14, R. 1183, 5810; 281, R. 2537, 3827; 958, R. 2537, 4393; 312, R. 2604, 3844; 313, R. 2537, 3844; C–181 (7), R. 1190, 5067; 1009, R. 2987, 4428). In Norwalk one or more of the distributors have given Schine a 90-day clearance from at least the 1936–37 season (Exs. 953, R. 2534, 5631; 958, R. 2537, 4393; P–234, R. 1170, 5893; 903, R. 2537, 4392). In Tiffin one or more of the distributors have given Schine a 90-day clearance since at least the 1936–37 season (Exs. W–6 (38). R. 1165, 5772; W–34 (45), R. 1167, 4609; 958, R. 2537, 4393; C–181 (44), R. 1190, 5104; P–236, R. 1170, 5895). During some of the time these clearances were in effect Schine had actual opposition in these towns (Int. Ans. R. 223–245). There was uncontradicted testimony in this case that the normal protection from first run in the same town was 30 days (R. 2782), and see Exs. 228–229, R. 2606, 3816–22.

[35] There were many clearances over even more extended areas. For the 1933–34 season, United Artists gave the Schine theatre in Norwich clearance over Delhi and Stamford, towns over 50 road miles away (Ex. 281, R. 2537, 3827). Fox and Paramount gave Schine's Strand Theatre in Cum-

theatres (Fng. 17, R. 3220–3221). The possession of such clearance gave Schine control over the bookings of the independent as he could only exhibit the film covered by the clearance in accordance with an availability determined by the dates on which Schine chose to play them in its theatre (R. 3666–3667). Such clearance, in effect, surrendered to Schine the booking control normally and properly exercised by the distributor.

But the harm to the public and to the pattern of competition in a wide area is considerably greater than this. As Mr. Smalley, one of the Government's witnesses, testified in respect to some of the towns in which he operated, and over which Schine took a clearance, Smalley felt compelled in many instances to take a clearance over other towns some distance away in order that he might not find himself in a position of having to play pictures later than such towns since he was bound by the clearance in favor of the Schine town (R. 2452–53). Another striking instance of clearance cumulation is found in the record. George Lynch, chief film buyer for Schine, wrote to United Artists, in December of 1940, that he

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berland, Maryland, for the 1940–41, 1941–42 seasons a clearance of 30 and 20 days, respectively, over Allegany County and 14 days over two towns in West Virginia (Exs. F 200, R. 1182, 6131, P 115 not printed. Columbia, Fox and United Artists have given Schine a substantial clearance over Athens County in Ohio (Exs. C. 181 (46), R. 1190, 5106; F. 42, R. 2577, 5948; 958, R. 2537, 4393).

thought a theatre in Sodus, New York, should follow Schine's theatre in Newark, New York (Ex. 318, R. 2604, 3846). Not only did United Artists' branch manager write back that they would be glad to give Newark clearance over Sodus "but I believe you will have to ask clearance over Wolcott, in addition to Sodus, due to the fact there is no clearance to or from either of these towns" (Ex. 319, R. 2604, 3846).[36] Thus one restraint begets another, and we find an entire network of restraints on competition all ultimately based upon a clearance taken by Schine in the first instance. The presence of an existing clearance in favor of Schine or the knowledge that a clearance over a town would be forthcoming upon demand of Schine, is of course a strong deterrent to the opening of a new theatre or the improvement of an existing one in such a town.

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[36] Appellants' discussion of Newark on page 158 of their brief lacks some important details. In October of 1937, United Artists' office manager at Buffalo wrote his branch manager as follows:

"*Newark*

"The thirty days protection that they have over Clyde, Lyons and Palmyra should be cut down to not more than ten days. As near as I can determine one of the major Distributors serves these three situations ten days after Newark, whereas ours calls for 30."

But Schine in subsequent seasons continued to get a 30-day clearance over Clyde, Lyons and Palmyra (Ex. 958, R. 2537, 4393). The unreasonableness of the Newark clearances given Schine is discussed and found in Appeal Board Decision No. 32.

There is plainly no occasion for granting any clearance over a town where no theatre exists except to protect an exhibitor from such competition as may arise in the future. Appellants' assertion that the reasonableness of a clearance is not subject to determination if there is no theatre against which it is imposed (App. Br. 152) misses the point entirely. Such clearances, of course, not only have the effect of retarding the construction of theatres in such towns but insure that when a theatre is built it will be subjected to a Schine clearance. Such clearances are indeed an acute aspect of Schine clearances generally.

An outstanding vice of Schine's clearances is that invariably the circuit has secured from the distributors a clearance in favor of a specific theatre of theirs in certain towns not over specified theatres but over other named towns. Such towns are thereby put into a second class category. Clearances of this type, particularly when provided for in long-term agreements, give Schine a contractual stranglehold over early run showings of pictures over very wide areas and cannot be responsive to changing conditions. Such clearances have subordinated the public interest to whatever extent Schine thinks is best for Schine.

Another common vice in Schine's clearances is that almost uniformly, where Schine has operated more than one theatre in a particular town, they have taken the same clearance for all their

theatres despite wide variations in the condition, size, and type of pictures played in the various theatres.[37] It is obvious that such a clearance is arbitrary.

[37] For example: Prior to May 19, 1942, at least five of the major distributors, Warners, R. K. O., Metro, Fox and Paramount had been giving a thirty-day clearance to the three theatres of Schine in Auburn, the Auburn, the Palace and the Jefferson, over Skaneateles, New York. This clearance operated against the Colonial Theatre in Skaneateles. Auburn is about 7 miles from Skaneateles. After the consent decree in the *Paramount* case, a complaint was filed by a threatre operator, who apparently had acquired the Colonial in 1940, alleging that this clearance was unreasonable.

The Appeal Board, in Appeal Decision No. 79, summarized the differences in operation and condition and revenue possibilities of the three Auburn theatres, and not only held that as to the best of these three theatres, the Auburn, the clearance over the Colonial at Skaneateles should be reduced to 21 days, but considered that as to the Jefferson, the clearance should be only 14 days except with respect to pictures moved over from the Auburn, in which event it should be 21 days from the end of the move-over run at the Jefferson. It also found that as to the Palace Theatre it was not entitled to a clearance over the Colonial of more than one day.

A similar clearance enjoyed by Schine in Gloversville, N. Y., was considered in Appeal Decision No. 67, and similar disposition was made.

The contracts introduced in evidence show that typically Schine got the same clearance for its theatres however variant in size and condition, even though in many instances the distributors charged a lower rental for films playing at the inferior theatre. E. G. Easton (Ex. F–134, R. 6066); Athens (Ex. C. 181 (46), R. 1190, 5021); Auburn (Ex. F–4, F–138, R. 1182, 2777, 5910, 6070); Cortland (Ex. C–181 (6), R. 1190, 5066); Oswego (Ex. F–59, R. 2577, 5964); Corning (Ex. C–181 (8), R. 1190, 5068); Int. Ans. 17–A, 18, R. 223–245.

The attainment of unreasonable results in establishing clearances within the Schine towns and in favor of the Schine towns over independent towns was inherent in the methods pursued in negotiating them. Thus, when the Warner Buffalo branch manager reported to the home office that "Mr. Schine absolutely refuses to make any part of his entire deal" unless he got certain clearances in Rochester (Ex. 550, R. 2836, 3943),[88]

[88] In Rochester, two independent neighborhood theatres, the Madison and Monroe, which were comparable to Schine's Riviera and Liberty and superior to Schine's State and Dixie, were compelled to play behind all four Schine houses, although the Schine houses were permitted to play day and date with each other. The Monroe and Madison were given no opportunity to even negotiate for the prior runs enjoyed by the Schine houses except on Columbia product, on which they got a second run, but when the Columbia franchise was made, this run was taken away from them and given back to the Schine houses at substantially lower film rentals. (See Rochester town summary in Appendix, pp. 133–145.)

A memorandum of May 23, 1939, from the Universal branch manager, is to the effect that since Schine had taken over the management of the Madison and Monroe theatres in Rochester from Fenyvessy (See town summary of Rochester in Appendix A) it was satisfactory for these theatres to play within the clearance period which had been reserved for the Schine houses (Ex. 396, R. 2606, 3903).

Columbia was not loath to act as Schine's spokesman to one of Schine's competitors in order to persuade the latter to give Schine greater clearances than they already had. Thus, when Smalley sought pictures from Columbia for his Norwich theatre, Columbia required not only that Smalley buy Columbia pictures for all of his towns but also that he take a clearance in those towns further behind that of Schine than was true in the case of the clearance given Schine by the other major companies, and therefore, he was unable to make a deal with Columbia for Norwich (R. 2494–95).

he was merely reporting the obvious fact that in negotiating a deal with a circuit intent on eliminating competitors, which occupies a monopoly position in most of the towns in which it operates, the distributors' opportunity to exercise their own judgment in determining what, if any, clearances the circuit's independent competitors should be subjected to, is virtually non-existent.

As indicative of the manner in which Schine dominated the distributors, the court also found that many of the clearances accorded Schine were given over towns as to which there had never previously been any clearance (F. 9 (b), 17, R. 3216, 3220–22).

Schine's relationships with the major distributors and Schine's manifested intent to get unreasonable clearances have, we submit, put all of Schine's clearances in a suspect class.[39] An exposition of use of unreasonable clearances against competing independents appears in the town summaries of Amsterdam, Corning, Ilion, Little Falls, Rochester, Syracuse, Van Wert, and Watertown

[39] In the following instances, even under the limited criteria of the consent decree in the *Paramount* case, Schine was found to have secured unreasonable clearances in the following towns: *Auburn*—Appeal Board Decision No. 79; *Cortland*—Arbitration Case No. 16-7F-42; *Gloversville*—Appeal Board Decision No. 67; *Ogdensburg*—Appeal Board Decision No. 4A; *Geneva, Seneca Falls*—Arbitration Case No. 16-6F-42; *Oneonta*—Appeal Board Decision No. 52, Arbitration Case No. 15-4F-42; *Newark*—Appeal Board Decision No. 32; *Norwich*—Appeal Board Decision No. 45.

in Appendix A. The trial court on this record might well have required all of Schine's clearances to be abolished and renegotiated on a plane of fair dealings with the independent exhibitor, which has not existed in the past. In the *Paramount* case, the judgment as to clearances was not limited to the provision quoted at pp. 218–219 of appellants' brief. That judgment also provided that all existing clearances granted by the defendant-distributors were presumptively invalid. The entire judgment in that case, in so far as it relates to clearance, is now under attack by both the distributors and the Government, in Nos. 79–86, this Term, but there is nothing in that decision which would suggest an injunction any more moderate than a mere injunction against future imposition of clearances which would unreasonably curtail the ability of competitors to compete with appellants.

C. *Control of admission prices charged by others*

Appellants have assigned as error (Assign. 103, R. 3500) the injunction in Paragraph 1, Section II of the judgment against Schine's attempting to control the admission prices charged by others. The illegality of such practice is obvious. The need for condemnation and prohibition in this case rests upon the court's findings (Fngs. 9 (c), 22, R. 3216, 3223).

Finding 22 gives two examples of competitive situations (Corning, N. Y., and Lexington, Ky.)

where Schine's film contracts with distributors provided for lower minimum admission prices at the Schine theatres than the independents' contracts with distributors required at their respective theatres. In each case Schine was playing an earlier run. The circumstances in each town clearly disclose that Schine was using its superior buying power to force film contracts from the distributors which would cripple or eliminate the competition of the independents. In Lexington, the independent eventually was required to sell to Schine, but in Corning, Schine's overtures to buy out the independent whose competition it was stifling did not succeed. Full details and record references indicating the evidence supporting the court's findings are set forth in the town summaries covering Corning and Lexington, in Appendix A, pp. 36–45, 62–67.

The trial court, both in its opinion and judgment, by its juxtaposition of treatment, recognized the relationship of clearance in this case to admission price fixing. Finding 9 (c) is another recognition of this relationship. The clearance agreements that Schine entered into with the distributors were themselves an indirect form of admission price control over Schine's competitors, since their position in the admission price structure necessarily had a direct relationship to the run or picture which they played and to the time when they were able to play a particular

picture."[40] The court was clearly right in prohibiting such control by any device whatsoever.

D. *Conditioning licensing of films in one competitive situation upon licensing of films in any other situation*

The court enjoined the appellants from conditioning the licensing of films in competitive situations outside of Buffalo upon the licensing of films in any other situation (Amended judgment, Section II, paragraph 3, R. 3229). As is apparent, this is a mere directive not to commit in the future a form of unreasonable restraint extensively employed by Schine in the past. The only way in which such a directive could effectively be enforced is a complete separation of the ownership and operation of the Schine theatres in each town from those in every other town, and

[40] In several instances, a Schine clearance itself makes express the relationship which is implicit in Schine's other clearances. For Schine's theatres in Athens, Ohio, Fox gave the following clearance (Exs. F-42, F-184, R. 1182, 2577, 5948, 6116):

"No picture (feature) will be played in any other theatre in Athens County earlier than 30 days after National Release Date, excepting Nelsonville, O., which the exhibitor grants the distributor the privilege of booking 14 days after Athens. Upon notification of violation, [the distributor] will not serve any theatre in Athens County charging less than 15 cents adult evening admission, including tax, earlier than 90 days after national release date."

A clearance given to Schine by United Artists in Glens Falls, N. Y., provided for 120 days over any house charging less than 20¢ evening admission for adults (Ex. 281, R. 2537, 3827).

the only possible argument against the provision as it stands is that it does not go far enough, since Schine can still operate as a circuit. This sort of relief merely supplements the relief given by the court against master agreements and franchises by attempting to put each competitive situation on its own feet and to take away Schine's power to use the distributors' desire to license Schine in its closed town situations, to give it preference in its competitive situations. We have cited elsewhere (Appendix A, pp. 75–89) the distributors' asquiescence in Schine's demands in one town and its refusal to deal with others there, because of a desire to retain the circuit as such as a customer. This provision was contained in the temporary order and a similar injunction against the defendants in the *Crescent Amusement Company* case, 323 U. S. C. 176, was there expressly approved by this Court.

E. *Execution of franchise*

Paragraph 3 of Section II of the Amended Judgment enjoins Schine from entering into franchises (R. 3229). This prohibition is specifically responsive to the court's finding that Schine reaped benefits unavailable to independents by virtue of its franchise agreements and that "these were utilized against independent operators as a means of restraint" (Fng. 16, R. 3220). Schine commenced execution of franchises about 1936 in departure from its apparent prior prac-

tice of executing contracts for only one year (*ibid.*).

This finding is amply supported by the evidence and clearly requires the prohibition of franchises, particularly in the light of the court's further finding that franchises were a principal means whereby Schine obtained its monopolistic control (Fng. 8, R. 3215). In the past, franchise agreements have been commonly used to freeze out any potential competition. Schine was able to monopolize film product over long periods of time in almost all of its situations, by virtue of franchises with all of the distributors except United Artists. United Artists, by entering into master agreements with Schine year after year, accomplished the same result as accomplished by the other distributors through franchise agreements.

There is evidence in the record that there was consciousness on the part of the distributors that franchises tended to protect a favored exhibitor from competition (Ex. 190, R. 2603, 3809). Undoubtedly, monopolistic intent was the motivation behind Schine's entering into franchises. Furthermore, almost all of the distributors used the existence of a franchise with Schine as an excuse not to deal with competitors of Schine. (Exs. 195, R. 2271, 3809; 650, R. 1527, 4168; 770–72, R. 1682, not printed in record; 824, R. 2040, 4360; 836, R. 2178, not printed in record; 896, R. 2433, 4388; 987, R. 2568, 4405; 901, R. 2493, 4391; 902, R. 2493, 4392.)

The judgment in the *Paramount* case on appeal to this Court contains a prohibition against franchises, and only one distributor defendant among the eight in that case has appealed from that provision. The temporary consent order in this case also prohibited Schine from entering into franchises.

F. *Agreements not to compete and to restrict the use of realty to non-theatrical purposes*

The appellants have assigned as error (Assign. 108) the court's injunction against Schine's enforcing existing agreements not to compete or to restrict the use of real estate to non-theatrical purposes. This type of agreement was one found by the court to be an element in Schine's monopoly and restraint of trade. (Fngs. 8, 11 (b), 15, R. 3215, 3217, 3220). Such agreements have been a frequent means of Schine's eliminating potential competition (See Exs. S–68—S–76 R. 1174–76, 5281–94). The trial court might also have forbidden Schine's securing such covenants in the future, but the requirement that Schine receive the court's approval of future acquisitions made such a prohibition unnecessary. Without the instant injunction, however, there might have been removed from the class of purchasers for theatres required to be sold by Schine some of those most interested and best able to make the purchase and compete with Schine.

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Agreements of this sort have been singled out for adverse comment in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 174; *United States* v. *Eastman Kodak Co.*, 226 Fed. 62, 75–76 (W. D. N. Y.). Paragraph (11) of the judgment affirmed by this Court in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, has a similar prohibition.

G. *Use of threats or deception to induce a competitor to sell*

The appellants have assigned as error (Assign. 109, R. 3501) the provision of the amended judgment which prohibits them from using threats or deception to induce a competitor to sell (Amend. Judg. II, 6, R. 3230). The court found the appellants guilty of predatory practices, which included threats and deception to induce a competitor to sell (Fngs. 8, 10, 11, R. 3215, 3217–19). The court's findings refer to some thirteen towns in which Schine coerced independents by such means as threatening to build new theatres (e. g., Canandaigua), to reopen long-closed theatres (e. g., Lockport), and to monopolize product (e. g., Van Wert). We submit this injunction properly results from the uncontradicted evidence, detailed in the town summaries, as to such conduct on the part of the appellants. See Appendix A.

H. *Continuance of restraints and monopolization*

Appellants have assigned as error (Assign. 110, R. 3501), the trial court's injunction against "continuing any contract, conspiracy, or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States * * *" (Amend. Judg., II, 7, R. 3230). It is said the injunction was not warranted by the findings of fact and by the evidence, was contrary thereto, was too general and indefinite in terms, and went beyond that which would be appropriate.

It hardly needs to be urged that it was well within the trial court's discretion to enjoin continuation by the appellants of the contracts, conspiracies, combinations, and monopoly violative of the Sherman Act. Provisions of this sort have been common in antitrust decrees. And where intent and scope of violation are on as broad a scale as in this case, it is submitted that the limited generality of this provision is much preferable to an attempt to describe, enumerate, and

enjoin only the identical major and subsidiary details of wrongdoing which might be culled from the record. See *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 186; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77–78; *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290, 308; *Local 167, International Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.

IV

THERE WAS NO ERROR IN THE ADMISSION OF EVIDENCE

Appellants have assigned error (Assignment 115, R. 3502) to the court's admission in evidence of over 100 exhibits, and the denial of their motion to strike or limit the effect of such documents so that they would not be taken as evidence of the statements they contained. Their assignment of error contains argumentative matter challenging the authenticity of these documents and urging, among other things, that there was no proof that the writers were acting within the scope of their authority or that they were sent or received. Arguments of this character now appear to be abandoned, and appellants contend only that this challenged list of exhibits was improperly admitted as constituting hearsay evidence. An argument that oral conversations between the complaining witnesses and the distributor representatives with whom they dealt should also have been excluded as hearsay is now made, but there

is no assignment of error which raises the question.[41] Such conversations were not assigned as error in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, and were relied upon to support the ultimate findings of guilt in both the district court and this Court. The attempt to argue this question is, therefore, not only foreclosed by the failure to assign error but by an obvious lack of merit as well. Any inquiry into the effects of a defendant's alleged monopolistic practices usually involves a consideration of such conversations.[42]

We have summarized the contents of each exhibit attached in appellants' assignments of error as erroneously admitted (Assignments 114, 115, R. 3502) in Appendix B of this brief and the precise form and character of each of these documents is made apparent in that summary. Appellants do not now argue in their brief that those which were letters written by Schine to the distributors or by them to Schine were improperly

[41] Assignment 114 assigns as error certain findings of the court said to be based exclusively on the documents specified in assignment 115 to have been erroneously admitted. Assignment 124 urges error in the district court's determination of the reasonableness of clearance as based on hearsay declarations, but these declarations were only made in documents attacked in assignments 114 and 115, R. 3502.

[42] See *Lawlor* v. *Loewe*, 235 U.S. 522, 536; *Johnson* v. *J. H. Yost Leather Co.*, 117 F. 2d 53, 60 (C. C. A. 8) and *American Cooperative Serum Ass'n.* v. *Anchor Serum Co.*, 153 F. 2d 907, 912 (C. C. A. 7).

admitted and we treat these assignments of error as abandoned as to these exhibits.

The appellants' argument is now principally directed at interoffice communications of the distributors which were obtained from their files in response to a subpoena and their authenticity, thus vouched for, has been unquestioned. In *United States* v. *Corn Products Refining Co.*, 234 Fed. 964, 978 (S. D. N. Y., 1916), appeal dismissed on stipulation, 249 U. S. 621, Judge Learned Hand held that typewritten, unsigned intra-office memorandum of officers of one of the corporate defendants had "the highest validity." The court characterized such documents as "never intended to meet the eyes of anyone but the officers themselves, and * * * as it were, cinematographic photographs of their purposes at the time when they were written." Many of those exhibits were offered to show the intent and state of mind of the distributors. As such they neither fall within nor are barred by the hearsay rule. *Norwich Transportation Co.* v. *Flint*, 13 Wall. 3, 6; *Greater New York Live Poultry C. of C.* v. *United States*, 47 F. 2d 156 (C. C. A. 2), certiorari denied, 283 U. S. 837.

These documents were part of the corporate records of the distributors, made in the regular course of their business. They, therefore, come squarely within the Federal statute permitting the reception of evidence of business records regu-

larly made and kept in the course of business. 28 U. S. C. 695. It is, of course, not necessary that the records, if regularly made, be books of account or contained in a bound volume. Recent cases in which letters and memoranda comparable to those received here have been admitted under this statute are *Harper* v. *United States*, 143 F. 2d 795 (C. C. A. 8); *Slifka* v. *Johnson*, 161 F. 2d 467, 469 (C. C. A. 2); and *United States* v. *General Motors Corp.*, 121 F. 2d 376, 409 (C. C. A. 7). See also *Gus Dattilo Fruit Co.* v. *Louisville & N. R. Co.*, 238 Ky. 322, 37 S. W. 2d 856, 858 (1931).

It is important to note that in many instances these documents contained either instructions to subordinate officials or explanations to superior officials. They were the contemporary tools by which the distributors carried on their activities. They have high probative value, since they were designed to be seen and acted upon by those having a common interest in the accuracy of the statements made and in the state of mind of the distributor vis-a-vis Schine and Schine's competitors.

Aside from these considerations, the inter-office communications were clearly competent evidence against the appellants under "the principle that when any number of persons associate themselves together in the prosecution of a common plan or

enterprise, * * * the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them." *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 249. Inter-office communications of the sort here offered in evidence have often been admitted in evidence in conspiracy cases under the antitrust laws. *Patterson* v. *United States*, 222 Fed. 599 (C. C. A. 6), certiorari denied, 238 U. S. 635; *United States* v. *Corn Products Refining Co.*, 234 Fed. 964 (S. D. N. Y.); *United States* v. *The Pullman Co.*, 50 F. Supp. 123 (E. D. Pa. 1943); *United States* v. *Hartford Empire Co.*, 46 F. Supp. 541 (N. D. Ohio, 1942). See *Pfotzer* v. *Aqua Systems, Inc.*, 162 F. 2d 779 (C. C. A. 2).

Extensive testimony of higher officials of these distributors who were remote from the day-to-day dealings of their companies with both Schine and its independent competitors was offered by the appellants and received in a general conclusory form intended to show that their course of dealing with both was normal and non-discriminatory (R. 2869, 2880, 2935). Their contemporaneous written records of what this course of business actually was either contradicted or qualified that testimony, and the records could not have been excluded while admitting such testimony under any concept of evidence as a device for ascertaining truth.

The appellants complain that the testimony of these distributor executives and similar testimony of J. Myer Schine should have been accepted as conclusive evidence that no conspiracy existed between them and Schine, and that the court was quite unfair in drawing an adverse inference from their failure to call lesser executives more intimately involved with the damaging documentary evidence and complaints of Schine's competitors. This is so, they tell us, because the unfavorable inferences drawn in *Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208, were the product of the neglect of the distributor defendants in that case to call their New York officials to deny the conspiracy charged there, and that omission has been corrected here. The fact that the conspiracy charged and proven there was between the distributors, whose normal contact with each other is through their New York chief executives, and that the conspiracies charged and proven here were between Schine and the distributors, whose normal contacts with each other is through a chain of minor executives on both sides, is apparently regarded as immaterial. Seldom, if ever, have the rules of evidence been pushed so far outside any context that could give them meaning as by the appellants' argument in this case.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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DECEMBER, 1947.

APPENDICES A AND B

APPENDIX A

Town Summaries

In the following summaries we have assembled the evidence in the record as to each town where divestiture was ordered or as to which oral evidence was received. Since every one of these towns was admittedly a part of the appellants' circuit for film buying purposes, we have not attempted to identify all of the film licenses in which each was included. Every one was included in one or more of the franchises and master agreements tabulated at p. 29 of the appellee's brief. In each case where the summary refers to memoranda or letters challenged by the appellants' brief as inadmissible, the exhibit and any reference to its contents are set off by brackets. Where the court strictly construed the evidence, that fact is footnoted.

Amsterdam, New York

(Pop. 1940, 33,329—R. 2573)

The Orpheum Theatre was operated by Morris Kronick from July 1931 to May 1941 (R. 1707). The other theatres operated during this period were the Rialto, Strand, and Regent, which were pooled between the Shea and Schine circuits from 1927 until August 16, 1935, when Schine bought out Shea's Amsterdam interests[1] (Int. Ans. 17–A, 18 and 23, and supp. sched., R. 223, 224). The Regent was kept closed from the fall of 1931 until the fall of 1936 (R. 1714).

With the exception of a few pictures obtained from independent producers, which he played first-run, Kronick was playing all product second-run at the Orpheum in the year 1935 (R. 1712). It was then, and since 1931 had been, the only second-run theatre in the town (R. 1712). During the seasons preceding 1935, Kronick's second-run product included Warner, Paramount, Fox, and Columbia (R. 1716).

Ex. 554 strictly construed by the court.

[In February 1935, Ray Smith, branch manager of Warner at Albany (R. 1325), reported to A. W. Smith, Jr., Warner general sales manager (R. 1325), that Kronick had written him several letters trying to purchase Warner product for sec-

[1] The sale agreement contained a covenant that Shea would not directly or indirectly operate any theatres in Amsterdam for a period of ten years (Ex. S–68, R. 1173–4, 5281).

ond-run in Amsterdam, that the writer had talked to George Lynch about this, and Lynch had requested him to refrain from selling the product to Kronick. Smith further recited that Lynch "left us holding the bag for $1,200 in short product," that Kronick ran his theatre "on a businesslike basis and does not cut his admissions," and favored such a deal with Kronick (Ex. 554, R. 3945).][1] On February 25, 1935, A. W. Smith, Jr., (Warner general sales manager) (R. 1325) directed Warner's Albany office not to sell "any of our pictures" to the Orpheum although stating that he would again discuss this with Ray Smith (branch manager of Warner) (R. 1325).

Kronick made a number of trips to the Warner office in Albany in an effort to obtain this second-run product for the Orpheum during 1935 (R. 1712–13). Smith put him off by promising to send salesmen to see him (R. 1713). Finally Kronick demanded a direct answer from Smith, and was told by the latter that he had an oral commitment of the Warner product to the Schine interests (R. 1713). He further told Kronick that if Schine had a selective contract, under which certain pictures were left over and not played, he would sell such rejected pictures to Kronick (R. 1713). Kronick replied he wasn't interested in left-over pictures; he wanted a full deal on second-run pictures or none; and was told by Smith that he could not do business with him (R. 1713).

Schine reopened the Regent on a second-run policy in the fall of 1936 (R. 1714), and a second-run for Amsterdam was included in the 1936-37

[1] Ex. 554 strictly construed by the court (R. 3089).

season master agreement between Schine and Warner, dated March 24, 1936 (Ex. W–6, R. 5736), although this run was not included in their 1935-36 season master agreement, dated April 24, 1935 (Ex. W–7, R. 1163, 4561). The second-run license for Amsterdam (Ex. 635–F, 5452, approved January 26, 1937, obligated Schine to play only forty-four of the fifty-nine 1936–37 features covered by the license, to be played at the Regent or Strand "60 days after First-Run and 60 days ahead of Third-Run."

[On November 30, 1936, Ralph Pielow, branch manager of Loew's at Albany (R. 1289) wrote J. E. Flynn, district manager (R. 1288), as follows:

> With further reference to second-run, Amsterdam, N. Y. When in Gloversville last week George Lynch mentioned that he would like to play a selective contract, second-run, in the Regent Theatre, Amsterdam, and the writer informed George that we could not do business that way, and he then later mentioned that he doubted if the theatre would be opened, but he did not want us to sell the Orpheum Theatre, *which request is unfair for him to make.* [Italics supplied.] (Ex. 497, R. 3925.)

After deciding the terms of the Orpheum's offer for a second-run deal on the 1935–36 product Pielow went on to say that he would give the Orpheum a definite answer regarding this proposition:

> * * * as we do not feel that in selling this theatre product a year old that it would in any way affect the first run theatre and in view of the fact that other national companies are selling this theatre second run, there certainly should not be any objection

to our selling the theatre in the event that we are agreeable to accepting this business.]

Kronick (finally) did obtain (this) (Loew) 1935–36 product second-run, either late in 1936 or early in 1937 (R. 1716). He had similar products of this company second-run until he sold out to Schine in 1941 (R. 1716) only because Schine did not choose to use it as the Loew franchise with Schine made on October 1, 1936, provided for sale of Metro product first-run to the Rialto, Strand, or Regent theatres and second-run, 45 days after first-run, to the Regent or Strand (Ex. 618, R. 3952, 3975) for the four seasons beginning with 1936–37. During the same period Kronick was able to continue as a second-run customer of Paramount,[3] Universal and Columbia (R. 1718).

During 1935, Kronick had a number of conversations with M. Grassgreen, Albany exchange manager of Fox (R. 1214), trying to buy a second-run but was finally told by Grassgreen that on instructions from his New York office he could not sell Kronick (R. 1713). Two runs of the Fox features for the 1936–37, 1937–38 and 1938–39 seasons were bought for Amsterdam by Schine as part of the three-year deal made on August 5, 1936 (Ex. F–1, R. 4951).[4] These two runs were

[3] Paramount contracts made with Schine for first-run at the Rialto or Strand in the 1936–37 and 1937–38 seasons gave Schine 90 days clearance over the Orpheum (Ex. 339–C, D, R. 5394–5).

[4] The 1936–37 season second-run license for Amsterdam (Ex. F–3, R. 5909), which supplements the three-year agreement (Ex. F–1, R. 4951), obligates Schine to play only ten features, to be played at the Strand or Regent "not earlier than 30 days after first run."

also continued through the 1939–40, 1940–41 and 1941–42 seasons by the second franchise dated June 8, 1939 (Ex. F–193, p. 2, R. 4969).

Kronick saw Myer Schine at Gloversville, New York, in 1937 after the Regent was opened by Schine, and told Schine he did not believe that since the Regent was a second-run policy, the city was large enough to maintain both it and the Orpheum as second-run theatres, and would be willing to sell to Schine for $10,000 (R. 1710). His business had been profitable prior to 1935, even during the depression years (R. 1719–1720), but he had begun to lose money after the Regent was opened (R. 1718–1719). In May 1941 (R. 1707), he sold the good will and equipment of the Orpheum to Schine for $7,000 (R. 1707), also making an agreement not to engage in theatre operation in Amsterdam for a period of five or six years (R. 1709).

Ashland, Ohio

This town was frequently included in franchises and master agreements covering other towns. Theatres in this town were acquired as part of a general expansion program by Schine in Ohio (Ex. 76, R. 3789). According to the appellants (R. 3262) Schine acquired the largest theatre, the Palace, in 1935; it acquired the Opera House, characterized by the defendants as an old theatre in 1936 and the Ohio, characterized by the appellants, as a converted store show in 1938.

After Schine took over theatre operations in the town the Ohio was kept open only part time, and four years after acquisition of the Opera House it was dismantled because of its condition (Int. Ans. 17, R. 233).

Despite the fact that the Opera House was an old house and apparently in poor condition, only Metro, and Metro only for 1940–41 season, differentiated in the clearance given Schine for both the Palace and the Opera House (Exs. P–224, C181 (35), R. 5095; F–41, R. 5947; 958, R. 4393; W–3, R. 4429; 618, R. 3952; 981 (47), R. 5699). While Schine had opposition in Ashland and afterward Schine secured a 90-day clearance over existing and potential theatres and a clearance of from 7 to 30 days over the towns of Lodi, Loudenvile, Shelby, New London. (Exs. C181 (35), R. 5095; P–224, R. 5884; F–41, R. 5947, F–183, R. 6115; 958, R. 4393; W–3, R. 4429; 618, R. 3952; 981 (47), R. 5699).

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Athens, Ohio

In September 1935 Schine acquired the Athens theatre with 893 seats. In January of 1936 Schine acquired the other two theatres, the Court, 267 seats and the Ohio, 299 seats. The Court was kept closed and opened occasionally or part time. Defendants in their objections to plaintiff's plan characterized the Court and Ohio as converted store shows, R. 3262. Not only the Athena but these converted store shows were given clearance over all theatres in Athens County by Columbia, Fox and United Artists. (Exs. C181 (46), R. 5106; F-184, R. 6116; 958, R. 4393). The clearance given by Fox was as follows: "No picture (feature) will be played in any other theatre in Athens County earlier than 30 days after National Release Date, excepting Nelsonville, O., which the exhibitor grants the distributor the privilege of booking 14 days after Athens * * * upon notification of violation the distributor will not serve any theatre in Athens County charging less than 15¢ adult admission, including tax, earlier than 90 days after National Release Date." Exs. F-(42), H. 4959, F-184, R. 6116.)

[A letter from Dana, Albany branch manager of Universal, dated October 28, 1936, to Krieger, Cincinnati branch manager, stated that contracts covering the Schine Circuit for Piqua, Athens and Delaware, Ohio were enclosed, and went on to say: "If clearances stated on these contracts are not what other major companies granted Schine,

you are then to take this matter up directly with George Lynch in Gloversville. It is my understanding with him that clearances as written in these contracts are the same as granted to him by other major companies." (Ex. 374, R. 3894.)] 3894.)].

Through numerous franchises Schine could and did keep existing and potential competition in Athens County in subservience not only by monopolizing major first run product in Athens but by taking clearances in these franchises over other towns and in Athens. (Exs. C181 (46), R. 5106; F-184, R. 6116; W-3 Sched. E; R. 4452; W-34 (33), R. 4597; 618, R. 3952; 981 (48), R. 5700; 358, R. 4393; 374, R. 3894).

AUBURN, NEW YORK

(Pop. 1940, 35,753—R. 2573)

Of the four theatres in Auburn, three are controlled by Schine—the Auburn, Jefferson and Palace. The fourth, the Capitol, is operated by Hubert P. Wallace (R. 1957). Schine acquired the Palace in 1923 (Int. Ans. 17–A, 18 and 23, R. 223), and operated it in opposition to Shea's Jefferson (R. 2735). In 1927, Schine and Shea formed a partnership, acquired the Strand,[1] and pooled the three theatres, each owning a one-half interest (R. 2734–2735). In 1929, these three theatres were leased to Fox-Metropolitan and operated by them until 1933 (R. 1960–1961, 2142, Ex. 813, R. 5555), when the pool resumed operation. In 1937 Schine bought out Shea in Auburn (Int. Ans. 17–A, 18, and 23, R. 223)[2] and has since operated them alone.

Wallace began to operate the Capitol in April 1931 (R. 1957) and has continued to operate it

[1] Schwartzwalder, the operator of the Strand, sold out a few months after Schine bought an abandoned church property for the purpose of erecting another theatre (R. 2698, 2726). No theatre was built there until 1938, when Schine constructed the Auburn (R. 2641).

[2] The sales agreement (Ex. S–71, R. 5289) provides: "In consideration of Shea's Agreement to sell, and Schine's agreement to purchase, Shea agrees that he will not directly or indirectly, or through affiliate corporations or subsidiary corporations or partnership arrangement, own, lease, or operate any motion picture theatre or other theatres in the City of Auburn, New York, for a period of five years from the date of this instrument" (R. 5292).

ever since (R. 1957, 2142). At that time the Jefferson and Strand were being operated full time and the Palace part time (R. 1957, 1958). During 1931 and 1932, the Capitol had all of the RKO product first-run, including short subjects (R. 1957, 2142–44, 2148). In addition, the Capitol played United Artists and Columbia product first-run (R. 2148). During the 1932–33 season, the Capitol had a split of RKO first-run with Fox-Metropolitan (R. 1957, 1958, 1960–1961, 2148).

After the Schine-Shea pool resumed operation of the Jefferson, Palace, and Strand in 1933 (R. 1958), Wallace never had a regular first-run RKO contract (R. 1960, 2146, 2147). Although Wallace had been sold and played 42 RKO 1932–33 features (Ex. 813, R. 5555; R. 1960, 1961), RKO did not even solicit him for the 1933–34 product (R. 1961). Charles Boasberg, RKO salesman, told him that RKO had sold its full line product to Schine-Shea as part of a circuit deal made with Schine which included the city of Auburn (R. 1962). Boasberg advised Wallace he could not stop this deal but would give him Schine rejects (R. 1962). Wallace did get three pictures first-run which Schine had rejected (R. 1958, 1959). During the 1933–34 season, Schine bought the RKO product first-run at the Jefferson and Palace theatres (R. 2147).

During the 1933–34 season, when Paramount was out of the Shea circuit (R. 2927), the Capitol had the full line of Paramount first-run (Ex. 814, R. 5556). When Wallace made this deal, the representative of Paramount assured him that he

would continue to be Paramount's regular first-run customer in Auburn (R. 1963, 1964). Wallace was not offered a first-run contract by Paramount for the 1934–35 season (R. 1962). He discussed this matter several times with both Kenneth Robinson, the branch manager, and Robert Caskey, salesman (R. 1962). Caskey first told him about October 10, 1934, that he would not get the product (R. 1962, 1963). He saw Caskey and Robinson a week later (R. 1963, 1964). Robinson said that the Capitol was a good account, that Paramount had received more money from the Capitol than it had expected,[3] that he had discussed this matter with J. J. Unger, Eastern District Manager, but could do nothing to prevent a sellaway to Schine (R. 1963, 1964). Thereafter Wallace heard nothing further from Paramount (R. 1963, 1964).

During this season (1934–35), Wallace played between 14 and 16 RKO pictures rejected by Schine (R. 1959, 2134). In addition, Wallace got United Artists pictures first-run early in 1935 (R. 1959, 2151, 2153, 2154) and Columbia first-run in February 1935 (Ex. D–123, R. 6198). The only other product he had for the 1934–35 season was between 90 and 100 independent and western pictures (R. 2151, 2153, 2154).

During the period from 1935 to 1938, Wallace made continuous efforts to negotiate for a regular first-run with various managers of the major

[3] The Paramount play-off record (Ex. 986, R. 4400) shows that Wallace paid more for the 1932–33 pictures than Schine paid for the 1933–34 features.

distributors[4] (R. 1964, 1965), but succeeded only in retaining his first-run of Columbia product. In 1937 he made a three-year deal with Columbia for the 1937–38, 1938–39 and 1939–40 seasons (Exs. D–125, R. 6200; D–126, R. 6201; D–127, R. 6202), which prevented a sellaway of this product when the Schine franchise with Columbia (Ex. C–100, 101, 102, R. 4971, 4973, 4975) was made in 1938.

From 1935 to the opening of Schine's New Auburn Theatre in September 1938, no Schine theatre played any regular second-run product (R. 1969). During this period Wallace made repeated efforts to buy second-run for the Capitol. He wrote to Fox (R. 1969, 2141, 2142) and in the fall of 1937 talked with Sydney Samson, Buffalo branch manager of Fox, and reminded him that Fox did not have any pictures playing in Auburn second-run. Samson replied that Fox was selling only an exclusive first-run to Schine and no other runs in Auburn (R. 1970, 2141, 2142). In April 1938, Wallace received a letter from Sidney Kent, president of Fox, to the effect that exclusive sales were not his general policy and that he would investigate Wallace's com-

[4] He was offered the pictures Schine rejected or reissues by Fox (R. 1967), Paramount (R. 1972), RKO (R. 1973), United Artists (R. 1960), and Warner (R. 1968); Loew (R. 1967) and Universal (R. 1975) offered him nothing. Wallace paid $5,125.68 for 23 1934–35 United Artists pictures, while Schine paid $1,457.84 for 11 1935–36 United Artists pictures (Ex. 718–A, R. 4296). In none of the four succeeding seasons did United Artists receive from Schine's three theatres in Auburn (Ex. 719, p. 16, R. 4322) as much as it got from Wallace's one for 1934–35.

plaint when he returned from Europe (Ex. 815, R. 1970–71). Wallace heard nothing further from Fox (R. 1971).

In 1936, Weissman, a Metro salesman, told Wallace that Metro had a first-run account in Auburn with whom it dealt on an exclusive run basis (R. 1974). In 1938, Wallace talked with Abe Harris, another Metro salesman about second-run. Harris advised him that he would discuss the matter with the branch manager and see Wallace later, but Wallace never heard from him (R. 1974, 1975).

With reference to a second-run contract with Paramount, Wallace talked with Kenneth Robinson, branch manager, and Fred Meyers, salesman, several times in 1936. Meyers said he saw no good reason why a second-run deal could not be made with the usual protection of 30 days. Robinson told him that he had discussed the matter of a second run with Unger, and was advised by the latter that Paramount would not sell a second-run in Auburn (R. 1972, 1973). Wallace was told by Boasberg of RKO that he would discuss a second-run proposition with the company and advise Wallace, but Wallace heard nothing further (R. 1973).

Early in 1938 Wallace talked with Leiser, a salesman for Universal, about a second-run (R. 1975, 1976), but Wallace heard nothing further from Universal. In the fall of 1937, Wallace asked Zurich for a complete second-run deal and was informed that Warner's had no second-run in Auburn because Warner's sold only one run in this city (R. 1972). After Schine opened the Auburn theatre in September 1938, Schine began

to play all major product second-run except Fox and Columbia at either the Palace or Jefferson (R. 1976).

Thus, since the 1934–35 season Wallace has had no regular major first-run deal except Columbia and no regular major second-run at any time. Since the 1938–39 season Schine has had under franchise all of the other major product except United Artists on first-run and all but Fox and United Artists on second-run.[5]

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[5] *Fox:* 1st run at the Strand, Jefferson, Palace, Auburn, by master agreement dated June 8, 1939 (Exs. F–193, R. 4969; F–138, R. 6070), for 1939–40, 1940–41, and 1941–42 seasons.

Metro: 1st run Jefferson, Palace, or Strand, by master agreement dated Oct. 1, 1936 (Ex. 618, p. 26, R. 3979); and second-run for Strand or Palace by deal sheet attached thereto dated Aug. 31, 1937, for 1937–38, 1938–39, and 1939–40 seasons.

Paramount: 1st run at Jefferson, Palace, Auburn (Ex. P–198, R. 1170, 5858); 2nd run at Palace or Jefferson. All pictures that play Auburn theatre first-run, and with the "privilege of picking up any picture after the Jefferson Theatre to play Palace Theatre at $20.00" (P–199, 5859) for 1939–40 and 1940–41 seasons.

RKO: Jefferson or Palace or Schine's Auburn, 1st run (Ex. R–37 (23), R. 4887); Jefferson or Palace, second-run (Ex. R. 37 (24), R. 4888) for 1938–39, 1939–40, 1940–41.

Warner: "Jefferson, Palace, Strand (closed)" 1st or 2nd run (Ex. W–3, sched. "D," sheet 1, R. 4429, 4446); with Palace or Strand for 2nd run (Ex. W–3, sched. "E," sheet 2, R. 4429, 4450) for 1937–38, 1938–39, 1939–40.

Universal: 1st run Auburn, Palace, or Jefferson (Ex. U–207 (25), R. 4749); 2nd run Jefferson or Palace (selection of 20 pictures) (Ex. U–207 (26), R. 4750) for 1939–40, 1940–41, 1941–42.

Columbia: 2nd run, Jefferson or Palace (Ex. C–102 (1), R. 4975; C–100, R. 4971; and C–101, R. 4973) for 1938–39, 1939–40, Schine apparently did not use this product (R. 1976).

Bellefontaine, Ohio

(Pop. 1940, 9,805—R. 2574)

The Strand, Opera House, and Majestic, the only theatres in the town prior to 1931, were leased by Milton Mooney, then a Warner salesman (R. 1336, 1414–16). The Majestic had been closed during the two or three years preceding 1931 and the Opera House had been open only on weekends until 1927, being then permanently closed by him upon the advent of sound equipment (R. 1413–14, 1715–16). In the fall of 1930, Schine started construction of the Holland and opened it in February 1931 (I. A. 17–A, R. 234).

During the 1930–31 season the Strand played Fox, First National, Paramount and F. B. O. (now RKO) (R. 1349–51) and for six years prior to that season, it had Metro product (R. 1350). Mooney attempted to obtain Metro for 1930–31 from Booth, Cincinnati manager, after its salesman had failed to call on him that season as in preceding seasons (R. 1349, 1350, 1363–64). When he finally saw Booth in October or November 1930, Booth told him that the Metro product had been sold by New York for the new Holland Theatre (R. 1364–65). Metro releases during the months of September, October, November and December 1930 and during January, 1931 were not made available to Mooney although his was the only theatre then operating, but were picked up and played at Schine's Holland Theatre along

with the current 1930–31 season releases when it opened in February 1931 (R. 1365).

The balcony of the Holland seated about 500 persons (R. 1365). When that theatre opened in February, 1931 (R. 1350), its evening admission price charge in the balcony (R. 1365) was less than Mooney's Strand price of 30 or 35 cents (R. 1365, 1436, 1703). The Strand continued to charge 30 cents until the Holland dropped its balcony price to 15 cents (R. 1366). The Strand then dropped its price to 25 cents and the Holland continued to charge a price of 15 cents (R. 1365–1366). The Strand was finally offering two tickets for one and 15-cent bargain hours in a futile attempt to compete with the Holland in May 1931 (R. 1436, 1705).

Between the last of February and the first of May 1931, John A. May saw Mooney in Cleveland and offered him $5,000 for his theatre interests in Bellefontaine, (R. 1366), which had cost him $15,000 in 1924 (R. 1366). Mooney rejected this offer and continued to operate the Strand at a loss (R. 1366). In the last of May or the first of June 1931, May offered Mooney $2,500, which he accepted (R. 1367).

In the seasons prior to 1931–32, the film salesmen of all major companies usually came to see him just after their conventions in May of each year (R. 1367–68). A number of the exchanges had sold him their product before the conventions, in January or February of the preceding years (R. 1367). No one from any of the major film companies had approached him with reference to selling him their 1931–32 season's product (R.

1367). He sold out because he had lost $8,000[1] after the Holland Theatre opened (R. 1368, 1446) and because he was afraid he wouldn't get any major product for the approaching 1931-32 season (R. 1368).

On September 10, 1932, George Lynch wrote Jack Flynn, district manager of Metro at Detroit (R. 1288), as follows:

> I understand that Mr. Harry Moller, our former manager of the Holland Theatre, Bellefontaine, has taken a short term lease on the Opera House, Bellefontaine. Mr. Moller was discharged from this organization for a number of reasons which I am unable to explain to you in this letter. Since his discharge, which is now over a period of six months, he has been causing us considerable trouble in regard to the propaganda he has been spreading, his main issue being that our admission prices are too high and that no one should have to pay over ten and fifteen cents for a show. He has now been able to sell this idea to the few people in Bellefontaine who have backed him to operate this Opera House. He personally has nothing and I want you to refrain from selling him any pictures whatsoever. Should your Cincinnati office sell or serve him with any pictures you will only be encouraging cheaper admission prices, double features and all in all unfair competition notwithstanding the fact that you will also hurt the film rentals which you are receiving from our theatre.
>
> I know it is not your desire to hurt us and this is therefore the reason I am writing you this letter before the harm is done.

[1] In the prior year he made a profit of about $10,000 operating with the four major products (R. 1446).

I would appreciate receiving a letter from you regarding this (Ex. 412, R. 3907).[2]

On September 12, 1932, Flynn replied and agreed not to sell second-run to Moller (Ex. 413, R. 3908).[3]

On September 13, 1932, I. J. Schmertz, Cleveland branch manager for Fox (R. 1216), wrote J. Sichelman, administrative assistant to the general sales manager (R. 1216), that they had received a wire from Lynch "asking us to withhold selling any pictures of last year or a second-run of this year's product" to Moller (Ex. P–163, R. 3798).

On October 21, 1932, Sichelman wrote Myer Schine as follows:

> You made a deal with Mr. J. R. Grainger [Eastern Division Sales Manager, R. 1214] for Bellefontaine, to take 32 pictures on the following basis:
>
> 8 features at 25% of the gross.
> 8 features at 20% of the gross.
> 16 features at $40,000 flat rental.
>
> This means that there are ten pictures open in this town, and at the time you made this deal, you told Mr. Grainger you could not use more than the number of pictures you bought.
>
> This means that we can sell second run and maybe the balance of the first run pictures that you do not use.

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[2] [The letter bears a pen or pencil notation "copy made for W. F. R., E. M. B.," W. F. Rodgers was then eastern sales manager of Metro (R. 1289); E. M. Booth was branch manager of the Cincinnati exchange territory (R. 1286).]

[3] [This office copy of the reply letter has printed at its top "Copy for W. F. Rodgers" and a typewritten notation at the foot "cc. Cincy.—together with copy of Mr. Lynch's letter September 10, 1932."]

Mr. Schmertz now advises me that in a conversation he had with you, you advised him that Mr. Grainger promised that we would not sell anyone in Bellefontaine. This is not so as you know that I was present when the deal was made and Mr. Grainger would never make a statement that would be detrimental to the Fox Film Corporation and whereby we lose 10 pictures on first run and also second run revenue.

We now have a chance to sell the ten pictures that you will not use as first run, and also sell 100% second run, and I am writing Mr. Schmertz to go ahead and sell the balance of the 10 pictures which you haven't bought on first run, and also sell second run.

However, if you decide you want the balance of the 10 pictures first run, you can take the matter up with Mr. Schmertz direct. We have got to sell second run and get the revenue in where it rightfully belongs (Ex. P-170, R. 3803).

On October 24, 1932, Lynch wrote to Sichelman as follows:

Myer Schine has referred me to your letter dated Oct. 21st regarding Bellefontaine. Perhaps, Jack, you are not acquainted with what has happened in Bellefontaine. The man who has opened up the Court Theatre was a former employee of ours and due to numerous things which happened during his employment he was let out. He then took over the old Opera House in Bellefontaine and got two men to put up some money and opened up in opposition to us.

The only product which he has been able to buy has been from independent companies. There has not been a major company that has sold him any product. He has advertised in the newspapers that they should patronize local people. He has bucked chain operation and is selling the product for 10 cents and 15 cents, children 5 cents, not only this but he has flooded the entire town with passes and I am quite sure that it is not your company's intent to encourage opposition of this kind.

If it was possible for us to play second run you may rest assured that we would certainly do it but I believe you will agree with me that a town such as the size of Bellefontaine is not large enough for a first and second run house. We are charging a top of 40¢ admission at our Holland Theatre and we don't want to have the distributing companies make it impossible for us to continue getting this price. I am quite positive that if you will take this matter up and explain to Mr. J. R. Grainger, the things which I have mentioned to you in this letter, he will agree with me that you should not sell second run.

I have also written Mr. Schmertz advising him that we will take the remaining pictures which we did not buy first run, and, have also asked him to refrain from selling this second run house.

If you would like to have me forward some of the opposition's ads, if you will write me I will be very glad to mail them to you (Ex. P–171, R. 3804).

On the same day, Lynch wrote a letter to Schmertz saying that he would take the ten addi-

tional first-run pictures but that Myer "would appreciate very much if you hold off selling the Court Theatre." The reasons suggested in the letter for not selling this account were that such action would encourage 10- and 15-cent houses which might jeopardize the 40-cent admission price established in Bellefontaine and that "there is no room in a town the size of Bellefontaine for a second-run house" (Ex. P-172, R. 3805).

During the 1932–33 season the Opera House was operated in opposition to Schine, but since that time the Holland Theatre has had no opposition (R. 234).

Moller's competition with Schine's Bellefontaine theatre ceased within the same motion picture season, i. e. 1932–33; as the Holland Theatre has had no opposition since August 31, 1933 (Int. Ans. 23, p. 12, R. 234).

Daniel Gutilla has continuously leased the Strand Theatre at Bellefontaine to the defendants since 1931, by four successive leases (Exs. 939, R. 5256, 940, R. 5258, 646, R. 5212, 647, R. 5214), the term of the last lease being from June 1940 to May 1950 (Ex. 647, R. 5214). The 1938 lease (Ex. 646, R. 5212) and the 1940 lease (Ex. 647, R. 5214) both provided that Schine must operate the theatre once a week for 14 weeks each year of the lease. During most of the period from 1934 to 1938, the Strand was kept closed (R. 1337, 1342). In negotiating the 1940 lease, Gutilla wanted a provision keeping the Strand Theatre open 26 weeks a year, but Lazar would not agree (R. 1343). Gutilla's son, who was then operating a small theatre eleven miles from Bellefontaine,

wanted to operate the Strand (R. 1343, 1344), and Gutilla wanted Lazar to get together with them for this purpose (R. 1344). In a conversation with Lazar before signing the 1940 lease, Gutilla said that he and his son would open the Strand Theatre and play second-run product (following Schine's Holland) if they couldn't agree on the 1940 Strand lease terms (R. 1345). Lazar then stated that in that event Schine would re-open the Opera House,[4] continuously leased and kept closed by it since 1934 and run second-run product in that theatre (R. 1346). Gutilla then signed the present Strand lease with Schine (R. 1346).

[4] Opera House was leased to defendants by successive one-year leases commencing September 1, 1933 (Ex. 934, 935, 936, 937, 938, R. 5255–5256).

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Bucyrus, Ohio

(Population, 1940, 9,727—R. 2574)

In 1935 Philip Charnas had operated the Southern Theatre in Bucyrus for a number of years. The State, the only other theatre, was operated by Milton H. Bryer, another independent. For the 1934–35 season Charnas had Fox, Paramount, United Artists, and Columbia, and Bryer had Metro, Warner, RKO, and Universal (R. 1035–36, 1048–49).

There was also in the town a partially completed theatre building acquired by Schine in August 1935. Although the new theatre was not completed until 1936 (Int. Ans. 17–A, R. 234), Schine was able to buy away from Charnas for the 1935–36 season all of his major product (Fox, Paramount, United Artists and Columbia) and from Bryer half of Metro and Universal (R. 1037–40, 1049–54, [Exs. 369, R. 3891, 370, R. 3892]). Bryer was apparently able to retain half of Metro only because Schine did not have its theatre open in time to use the releases of the first half of the season. A rider attached to Bryer's contract provided that he should have all of the releases until the end of December 1935, and thereafter such additional picture as would give him a split (Ex. P–61, R. 5318).

Bryer testified that he signed an application for 1935–36 Warner product but did not receive an approved contract (R. 1040). In this latter statement he was mistaken as he received a con-

tract (Ex. D148–D, R. 2575, 6213) approved September 5, 1935, in a letter dated September 9, 1935, from the Cleveland branch office (Ex. D–170, R. 5190), and a percentage report (Ex. D–170, R. 5190A) shows that he played the first 1935–36 release, "Page Miss Glory", on September 8, 9, and 10, 1935 (Ex. 645, R. 4109). Bryer sold his theatre to Schine in the same month but continued to manage it for Schine (R. 1041), and all of the remaining Warner product which the State played in the 1935–36 season was delivered under the Schine contract for the same theatre and season (Ex. P–62, R. 5320), which contract bears an approval date of July 25, 1935, and states "all terms and conditions of the Master Agreement dated April 24, 1935, to be part and parcel of this contract." Although Andrew W. Smith, Jr., general sales manager of Warner, who issued that contract, testified as to the method of numbering contracts in an abstract of contract form prepared in the branch offices which showed that the Schine-Warner contract was made up by the Cleveland branch in December 1935 (R. 2784), Smith offered no explanation whatever as to why the approval date was July 25, 1935. Mooney testified that the Cleveland branch had nothing to do with negotiating the Schine deals but merely made up the contract forms on instructions from New York after the deals were made by New York (R. 1379–82, 1388–97), and this might be as much as nine months after the deal had actually been set up in New York (R. 1396, 1397).

After he had been deprived of half of the Metro product for 1935–36, and after Lazar told

him that Schine was going to make a beautiful theatre out of the unfinished building, Bryer sold his interest in the State Theatre to Schine at the end of September 1935, and accepted a contract of employment as manager (R. 1041). The State was closed in 1936 after Schine's new theatre (called the Bucyrus) was opened (R. 1047), and was converted to commercial use after the Southern was acquired from Charnas (Int. Ans. 17–A, R. 234).

Charnas was contacted by Lazar as early as three months after Schine acquired the partially completed theatre building with reference to selling the Southern Theatre, but he continued to operate on second-run product until April 1937, when he sold out to Schine (R. 1054). Schine notified various distributors that the Southern was to be closed indefinitely (Exs. P–72, 73, R. 3787). Thereafter the theatre was operated only occasionally part time (R. 234). Nevertheless, Schine extended the Southern lease for a further period of two years beginning April 1, 1941, agreeing to pay a rental of $3,600 a year (Ex. 932, R. 5253). The new lease provided for a three-year privilege of renewal at $2,400 a year (Ex. 932, R. 5253).

CAMBRIDGE, MD.

(Pop. 1940, 10,102—R. 2574)

In April of 1938 Schine acquired all three theatres in Cambridge, Md. One of the theatres, the Grand, has been kept closed but opened occasionally or part time (R. 240). Schine has retained the Grand although the contracts in evidence show film licenses were not taken for this theatre (Exs. C181 (29), R. 5089); F-133, R. 6065; W34 (58), R. 4622; 981 (74), R. 5726; P-181, R. 5842; U207 (82, R. 4806). For the other two theatres Fox gave Schine a clearance, in a franchise of three years' duration, of seven days over Federalsburg, a town which, according to standard road maps is over twenty miles away. (Ex. F-133, R. 6065.)

Canandaigua, New York

(Pop. 1940, 8,321—R. 2573)

In 1938 the only theatre in Canandaigua was owned by Schine (R. 908, 1976, 1977). In April 1938, Richard De Toto had discussed with a Mr. Marks the proposition of constructing an additional theatre in the town (R. 908, 960). At the same time Hubert Wallace went to Canandaigua to negotiate a deal for the construction of a theatre on the Jenkins property on the main street (R. 1976–77). Wallace and A. J. Lauer, real estate broker of Auburn, made several trips to Canandaigua and talked with the owners and their attorneys about the proposition of converting the Jenkins property into a theatre (R. 1977, 2131, 1843, 2940–41, 2952).

Wallace and Lauer proposed a deal to Jenkins before May 10, 1938 (R. 1845, 2960) and had plans drawn for the proposed theatre (R. 1844, 1848). The proposed new theatre was brought to the attention of Schine (R. 2647) and a sign was posted on the Flannigan property, on the main street of Canandaigua, which stated that a theatre would be built on that site by Schine (R. 1977, 2014). On May 10, 1938, the first page of the Canandaigua Daily newspaper carried a story supplied by Macfarland, manager of the Schine theatre, announcing that Schine had bought the Flannigan block on the main street on May 9, 1938,[1] and that the present structure

[1] This statement was false. When Schine finally did build a new theatre in April 1941 it built on other property bought in 1939 (Int. Ans. 17–A, 18, p. 2, R. 224; Int. Ans. 31, p. 1, R. 254).

would be demolished and a new theatre would be built thereon (R. 2359, 2362–63, Ex. 806, R. 5217). Both De Toto and Lauer saw this news item (R. 908, 1845–46). On the same day the newspaper announcement was printed (May 10, 1938), Lauer received a telegram which was signed by J. W. Jenkins, Jr., reading "Have decided to turn down your proposal at this time" (Ex. 805, R. 4335). Neither Wallace nor De Toto went ahead with their plans (R. 909–10, 1847, 1977–78).

Corbin, Kentucky

(Pop. 1940, 7,893—R. 2572, 2574)

The nearest town to Corbin which has a theatre is about 14 miles away (R. 731) and the nearest in Kentucky which approaches Corbin in size is Harlan, about 75 miles away (R. 731). In 1938 Hiram Owens began construction of a theatre in Corbin (R. 737–738), and about October 24 made a contract with Grover Scott, with respect to the construction and operation of this property (R. 731–32, 735, 736, 745). Prior to this time there were two theatres in town—the Hippodrome and Kentucky (R. 742), which were operated by Louis Merenbloom and acquired by Schine in November 1938 (Int. Ans. 17–A, 18, 23, R. 238). Scott was then operating the Liberty at Pikeville, and the Margie Grand in Harlan, Kentucky (R. 744).

Within ten days after Scott made the agreement with Owens (R. 746), he attempted to get film product for the new theatre. He signed an application (R. 747–48) for a first-run of Universal for the 1938–39 season on October 31, 1938, at the Cincinnati branch which was approved at the home office as of November 11, 1938 (Ex. 19, R. 5307).[1] Despite the normal practice in the industry to send a copy of an approved con-

[1] Scott tentatively adopted the name of Roxy for the theatre (R. 749, 763), and this was the name he used in making the application (R. 749).

tract to the exhibitor signing an application, so he may know whether or not he is getting the product and make the necessary booking arrangements (R. 2764, 971, 972, 1230, 1277), the approved contract was not sent to Scott. He never saw it until the time of the instant trial (R. 748, 749). Two or three weeks after he signed the application, Scott went back to Cincinnati to inquire about his Universal deal (R. 749), and was advised by Reiger, the branch manager (R. 747), that he did not think Scott could have the product. Scott's deal was cancelled[2] and Universal later contracted with Schine on January 13, 1939, for the same product (Ex. 37, R. 5316) at less advantageous terms[3] than those approved for Scott (Ex. P–19, R. 5307).

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[2] [The cancellation memorandum dated Dec. 15, 1938, states (Ex. P–39, R. 3782): "This deal was intended for a new theatre to be built in Corbin by Mr. Scott. In the meantime, the Schine Circuit have acquired the Hipp and Ky Theatres and have made a deal with Mr. Scott whereby the new theatre will not be built. Mr. Miller negotiated a new contract with Schine, making it necessary to cancel this contract with Mr. Scott. Please approve."]

[3] See the following table:

SCHINE'S CONTRACT (EX. P–37, R. 5316) CALLS FOR

	Number of features	Consecutive days run	Rental terms
	4	3½	60.00.
	4	3½	50.00.
	8	3½	32.50.
	10	3½	17.50.
Feature reissues	1	3½	30.00.
Westerns:			
(Baker)	6	3½	90.00
(Maynard)	6	4½	75.00.
No short subjects.			

Footnote continued.

Although the branch manager of United Artists took an application from Scott, they would not give him a contract (R. 752, 753). Metro refused even to negotiate with him for second-run product in Corbin (R. 754-57). After his failure to get any major film product, Scott assigned his agreement with Owens to Schine by agreements of November 25, 1938, and December 2, 1938 [4] (Exs. P-20, P-21, R. 3772, 3775).

Schine did not perform the assigned contract and it was cancelled by Owens (R. 739). In December 1938, Lazar suggested to Owens that Schine would pay him $7,500 not to complete construction of the theatre (R. 737-739). It was also suggested to Owens that because of Schine's greater buying power he would have difficulty in operating the theatre himself or securing a tenant

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Footnote 3 continued—

SCOTT'S CONTRACT (EX. P-19, R. 3307) CALLS FOR

	Number of features	Consecutive days run	Rental terms
	8	2	75.00 as against 35% of the gross receipts.
	8	2	50.00.
	8	2	30.00.
	8	2	20.00.
	8	2	15.00.
Feature releases	1	2	35% of the gross receipts.
Westerns:			
(Baker)	6	2	Total $120.00.
(Maynard)	6	2	Total $90.00.
Shorts	65	2	Total $195.00.

Grand Total, Schine Contract (Ex. P. 37, R. 3316), $1,000.00.
Grand Total, Scott Contract (Ex. P. 19, R. 3307): $1,925.00 guarantee plus possible additional percentage rental on nine features.

[4] This assignment was part of an agreement between Scott and the defendants which gave Schine 5% of the gross receipts of his theatres at Harlan and Pikeville, Kentucky, in return for buying the films for them.

to operate it (R. 739–740) but Owens declined the offer (R. 737–739).

Other persons contacted Owens with reference to leasing the theatre (R. 739), including Price Coomer, who told Owens he would have to investigate the situation as to buying film before he could make him a proposition (R. 844). In the spring of 1939 Coomer inquired of Allen Martz, branch manager of Columbia, of Max Stahl, branch manager of United Artists, and of Al Schmitkin, branch manager of Warner Brothers, about first- or second-run product for Corbin. Stahl told him that United Artists had no product in Corbin to sell (R. 847–848); Schmitkin stated first- and second-run had been sold in Corbin (R. 849). Martz said that first-run was sold and told Coomer he would have to take it up with the home office whether he could sell Coomer second-run, but that he thought it would be poor business to sell Coomer a second-run (R. 847–848). Coomer made no proposition to Owens (R. 848–849).

By June 1939 Owens completed the theatre which was named the Viv (R. 741, 789). It was more attractive and modern than either of the other two theatres (R. 741), with better equipment than the Hippodrome (R. 792), and far superior to the Kentucky, the other theatre operated by Schine (R. 793). The Viv was leased to M. K. Murphy in May of 1939 (Ex. P–22, R. 757–758). Fox, Paramount, Metro, Warner, RKO, and Columbia all refused to negotiate with Murphy for first-run (R. 777, 784, 786). Murphy subsequently tried to get second-run product from the major distributors (R. 784). Fox, Paramount, RKO, and Metro

would not negotiate with him for second-run (R. 784–786). Warner would not negotiate with Murphy for a current second-run, but was willing to sell some pictures several years old (R. 786). Columbia sold Murphy a second-run contract in September 1939 for the 1938–39 product (Ex. P–23, R. 5308) and also for the 1939–40 season, but the play-off of the latter product was to commence February 1, 1940 (Ex. P–24, R. 5309). This had the effect of giving Schine a clearance over second-run on the current product (1939–40) of at least 150 days.

Although Murphy paid rent from June 15, 1939 (R. 789, 801) he could not get a picture to open with until October 30, 1939.[5] The pictures he played were old pictures (R. 790, Exs. P–26, R. 837; 619, R. 3998; 645, R. 4109; 717, R. 2538, 4285), and the theatre did not make expenses (R. 805, 814–815, Ex. P–26, R. 837). During this period between the fall of 1938 and the spring of 1940 when the defendants were threatened with, and experienced competition in Corbin, Schine had tied up all the first- and second-run[6] product

[5] The equipment for the theatre was ready by July 1, 1939 (R. 800) and Murphy had the equipment shipped as soon as he had a picture to open with (R. 801).

[6] The 1938–39 and 1939–40 second-run contracts of Fox with Schine moreover committed Schine to only 20 pictures (Exs. P–29, P–31, R. 842, 5312, 2529, 5315) less than half of all the pictures actually released for that season by Fox (Ex. 337, R. 2539, 3850). Not until several weeks after refusing to negotiate with Murphy for the first-run did Fox enter into a first-run contract for the 1939–40 product with Schine (R. 774–775, 778, Ex. P–30, R. 5314). After the time when Murphy was trying to get second-run Metro product during the summer of 1939 (R. 784–785, 787–789), without success,

of all majors except Columbia second-run (R. 775–790, 754–755, 800, 845–849). This amount of product was more than the operation of their two theatres in Corbin could use [R. 793–797, Exs. P–29, R. 5312, U–207 (31) R. 1191, 4755].

After the Viv opened, Schine reduced the balcony admission prices at the Hippodrome (R. 790–791). Fox assisted Schine in this reduction by omitting from the license any minimum admission prices for the exhibition of Fox films in Schine's theatres in Corbin (see Ex. P–29, R. 5312, with which compare P–30, R. 5314, P–31, R. 5315, and P–42, R. 5317). In May of 1940 Murphy sold out to Schine (R. 789, Int. Ans. 17, A, 18, 23, R. 238). After Schine took over the Viv, the admission prices were increased at the Hippodrome and Viv (R. 790–791), and the Kentucky was closed (Int. Ans. 17 A, 18, 23, R. 238).

Schine was able to procure a second-run 1939–40 contract (Ex. P–27, R. 5310). This was true also with respect to the Fox second-run 1939–40 contract (R. 784–785, Ex. P–29, R. 5312).

Corning and Addison, New York

(Pop. 1940, Corning, 16,212—R. 2573; Addison 1,400—R. 1863)

The Plaza Theatre was operated in Corning from 1926 (R. 2195–2196) to 1943 by Irving Cohen and Morris Gaby. Since 1943 Cohen has been sole owner (R. 2196). The other theatres in the city are the Fox, State, and Palace (Ins. Ans. 17–A, 18 and 23, R. 225). The Fox (formerly the Liberty) and State were owned by Schine but operated by Fox Metropolitan from 1929 to 1933 (R. 2196–97; Int. Ans. 17–A, 18 and 23, R. 225). The Palace was closed for a time during that period (R. 2197) and then bought and reopened by Frederick Gerber. In the 1931–32 season, the Plaza had Warner, First National and other major product second-run, as it did for the 1932–33 season (Ex. 637 A, B, C, D, R. 5461–5471). In 1933, the Palace, under Gerber's operation, played Columbia and United Artists first-run, which the Plaza played second-run after the Palace (R. 2198).

When Schine resumed operation of the State and Fox in 1933, it commenced playing pictures of major producers first-run at the Fox, and then repeated a second-run of the better pictures at the State, relegating the Plaza Theatre to a third-run position with a very long period of clearance against it from the time pictures were played first-run until they were received by the Plaza for

third-run use, namely 90 to 220 days afer first-run[1] (R. 2198–99; Ex. 326 G, H, and I, R. 2528,

[1] The Fox contract for first run of its features at the Fox, made by Lynch for Schine Theatrical Enterprises, Inc., on August 1, 1933, provided a 60-day protection in Corning (Ex. 326–G, R. 5379). A contract for such pictures for second-run use was made by Lynch on Nov. 9, 1933, with clearance "60 days after first-run with 60 days clearance on 3rd run" (Ex. 326 H, R. 5380), and a contract signed by Gaby and Cohen with Fox under date of December 9, 1933, was for "3rd run as available. If the Fox or State play one run, then this is to be 2nd run, but if they play two runs, then this is to be a 3rd run" (Ex. 326 I, R. 5381).

The Metro 1933–34 contract made by Lynch for Schine Theatrical Company, Inc., for its State Theatre provided that it receive the pictures 60 days after first run and protection for it of 30 days over 3rd run (Ex. 611 A, R. 5431).

The contract between Metro and Gaby and Cohen for their use of Metro product at the New Plaza Theatre provided they were to receive the product "as available after Schine clearance" (Ex. 611 B, R. 5433). The First National and Warner contracts for the same season for use of their product by Schine Theatrical Company at the Fox Theatre contained 60 days protection provision over 2nd run (Ex. 637 D, R. 5469–70), with the State having 60 days over Cohen's third-run (Ex. 637 A, R. 5463, 637 C, R. 5466).

Universal contracts for the same season gave the Fox or State Theatres first-run. Gaby and Cohen's Plaza Theatre was sold on "exclusive 2nd run" (Ex. 698–A, R. 5487) by contract approved on September 14, 1933 (Ex. 698–C, R. 5489), but on December 20, 1933, a contract was made with Lynch of Schine Theatrical Company for the State Theatre giving its second-run and providing "first-run has 60 days over second-run and second-run has 60 days over third-run" (Ex. 698–B, R. 5488). The first-run contract for the Fox or State had been approved November 18, 1933.

On November 1, 1933, a contract for 40 RKO features was approved for the Fox or State first-run, giving them 160 days clearance over 2nd run. Gerber's Palace Theatre obtained the second-run by contract approved August 19, 1933 (no

5379–5381). Whatever pictures of major producers Schine did not use second-run at the State, became available for second-run use at the Plaza during the period from 1933 to 1938 (R. 2198).

Defendants acquired the Palace from Gerber in April 1938 (Int. Ans. 17–A, 18 and 23, R. 225), and the best run the Plaza could get major product on thereafter was third-run[2] (R. 2199), with the exception of a Columbia second-run (R. 2200).

Prior to 1933, the Plaza charged an evening adult admission price of 35 cents, (R. 2200) and the Fox charged 40 cents. After the defendants reacquired the Fox and State, during the 1933–34 season the prevailing adult evening admission price at the Fox was 35 cents (R. 2200), the Palace 35 cents, and the State, 25 cents (R. 2200–01, Exs. 326 A, B, R. 5373–4).[3] The Plaza then re-

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clearance over 3rd run stated); and the Plaza obtained the same pictures 3rd run by contract approved February 28, 1943. In the 1934–34 season the Fox or State first-run contract with RKO specified 160 days clearance on second-run (approved November 10, 1934), the second-run for the State Theatre specified "60 days over third-run," and Gaby and Cohen's Plaza had the product 3rd run by contract approved April 30, 1935 (Ex. 628 A, B, C, D, E, and F, R. 5437–5442).

[2] Cohen explained that all his contracts stated as to run that pictures were to be furnished "as available," and this meant that Schine had the privilege of running pictures at the Fox, at the State, or at the Palace, and then the pictures were made available to the Plaza (R. 2200).

[3] The First National-Warner contracts for Schine's Fox Theatre in the 1933–34 season required only an evening admission price of 25 cents (Ex. 637 D, R. 5470); only 15 cents at the State (Ex. 637 E, R. 5473, 5474); and 15 cents was required at the Plaza (Ex. 637 F, R. 5476).

duced its adult evening admission price to 25 cents, which generally prevailed with the exception of certain "bargain night" prices (R. 2215–2217), for the reason that it could obtain major product only on second or third run (R. 2201). The State then slashed its prices (R. 2201) during the next six months, compelling the Plaza to reduce its prices to 20 cents (Exs. 637, A, B, C, R. 5461–68). The State cut its adult evening admission price to 15 cents, during a part of the period from 1934 to 1938, compelling the Plaza to then cut to the same price (R. 2201),[4] but the general admission price level of the Plaza did not go below that of the State (R. 2202–3, 2217). The Plaza contracts in evidence all prohibited it from charging less than 15 cents for an evening adult admission (Exs. 698 C, R. 5489, 611 B, R. 5433, 637 C., R. 5466–68, 628 C, R. 5439; February 19, 1934; April 30, 1935; 326 C, R. 5375, 326 F, R. 5378).

Schine also introduced admission price ticket "give-aways" in the form of a student ticket, admitting students to the Fox, the first-run theatre, for the price of 15 cents, while its regular evening admission price was 35 cents in the orchestra and 25 cents in the balcony (R. 2202–04).

The Fox contracts for the 1933–34 season actually permitted Schine's State Theatre, with 60-day clearance over the Plaza, to charge an adult evening orchestra admission price 5 cents lower

[4] See Fox, Warner-First National, contracts for 1934–35 season (Ex. 326 E, F, R. 5377–8; Ex. 637 A, B, C, D, E, F, R. 5461–77).

than the Plaza was required to charge.[4] Under the 1935–36 season Fox contracts, for Twentieth Century features the State was allowed to charge an orchestra evening adult admission price of 15 cents (Ex. 326 B, R. 5374), while the Plaza, following at least 60 days later, was also required to maintain the same price (Ex. 326 C, R. 5375). Fox contracts for the preceding season imposed the same clearance and admission price restrictions as between the State and Plaza theatres for all features (Ex. 637, A, B, C, R. 5461–68; 326 E, F, R. 5377–78).

For the 1933–34 season, Universal had on September 14, 1933 sold Gaby and Cohen a second run of its 47 features, including 9 westerns, for the Plaza for which they were obliged to pay $582.50 (Ex. 698 C, R. 5489). On December 20, 1933, a contract was made with Schine for a selection of twenty features to be played at the State, with those playing first run at the Fox "to play second run" at the State for a total rental of $262.50, with 60-day protection over third run (Ex. 698 B, R. 5488).

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[4] The contract for first run at the Fox contained no minimum admission price requirements (Ex. 326 G, R. 5379), that for second run at the State allowed it to charge evening admission prices of 15 cents in the orchestra (Ex. 326 H, R. 5380), and the third-run contract for the Plaza required evening admission prices of 20 cents in the orchestra (Ex. 326 I, R. 5381).

Similarly, the Metro 1933–34 contract for Schine's State theatre omitted any minimum admission price requirement (Ex. 611 A, R. 5431); as did the Universal contract for the State (Ex. 698 B, R. 5488) and the RKO contracts for the Fox or State theatres in both the 1933–34 and 1934–35 contracts dated November 1, 1933, and November 10, 1934, among file of Exs. 628 A to E, R. 5437–41.

The State Theatre in 1933–34 obtained two top Warner-First National pictures at flat rentals of $25 each, and the balance at flat rentals of $17.50, and the last four at $15 flat (Ex. 637 E, R. 5474). On the other hand, Gaby and Cohen, playing these pictures third run, sixty days after the State and 120 days after the Fox, were required to guarantee flat rentals of $12.50 each against 35 percent of the gross receipts on the nine top pictures, the balance at flat rentals of $10 per picture (Ex. 637 F, R. 5475–77). These same contract conditions prevailed in the 1934–35 season (Exs. 637, A, B, C, R. 5462–68).

Under the 1933–34 contracts between Fox and the defendants the State paid only $37.50 for the two top pictures and $15 flat for the remaining 43 (Ex. 326 H, R. 5380). Running them 60 days after the State, Gaby and Cohen paid 30 percent for the six best pictures, with a $15 guaranty against each, and paid $12.50 apiece for the remaining 39 pictures (Ex. 326 I, R. 5381). The next season still with 60 days clearance against it, held by the State, the Plaza actually paid more for Fox pictures than the State did.*

[On October 21, 1933, George Lynch wrote Jack Flynn, district manager of Metro (R. 1288), relative to Schine theaters in six towns, including the State at Corning, requesting that "if there are

* On the two best pictures they paid $25 apiece against 40 percent of the gross receipts, on 12 they paid $20 apiece against 35 percent of the gross receipts, on eight they paid $15 apiece, and on 23 they paid $10 apiece (Ex. 326 F, R. 5378), whereas the State Theatre was only paying $15 apiece for 41 of these pictures and $37.50 flat for the four best (Ex. 326 E, R. 5377).

any other opposition towns where you believe you can sell at second run, I would appreciate it if you will take the matter up with me first before selling" (Ex. 425, R. 3910).] Second-run opposition on Metro product was prevented by a second-run contract made on February 24, 1934 (Ex. 611 A, R. 5431), which did not obligate Schine to play any specific number of pictures on this run, as it provided for the elimination of "any pictures which play first-run at" the State.

[Before accepting a contract to allow some RKO 1934–35 product to be played second-run at Gerber's Palace Theatre late in the season, E. L. McEvoy, eastern sales manager (R. 1294), required an answer whether "the Schine Organization at any time have complained about the low admission charged by this theatre"; he also demanded to know "what other major distributors have sold this exhibitor their 1934–35 product" (Ex. 527, R. 3937).] Although Gerber (finally) bought a second run (from RKO), Schine was allowed to violate Gerber's contract by playing "Becky Sharp" both first- and second-run in Corning (Ex. 530, R. 3938).[7]

During the time that E. K. O'Shea was the branch manager of the Buffalo, New York, exchange of Metro (R. 1289), between 1933 and 1937, O'Shea told Cohen his company sold its product to Schine in New York, and that the only way his product could be sold Cohen was to follow after the Schine theatres (R. 2204). About 1935 or 1936, Cohen tried to get Fox second-run pictures and was told by Sampson, Buffalo man-

[7] Released in July 1935 (Ex. 634, R. 4078).

ager (R. 1215) that the Schine deal was made in New York City, and his product would have to be sold to Cohen as available after Schine's theatres (R. 2205–06). Dave Miller of Universal made the same response to a request for this product second run (R. 2206). Harry Seed, Warner exchange manager at Buffalo (R. 1324), told Cohen he was "lucky to get pictures" at all, (R. 2207). Both Kenneth Robinson, exchange manager of Paramount at Buffalo (R. 1238) and Charles Boasberg (R. 2208–09, 1292), RKO's Buffalo manager, told Cohen they could only sell their product as available after the Schine theaters had used it (R. 2209).

In July 1939, Cohen and Gaby went to Gloversville and saw J. Myer Schine in an attempt to persuade him to release some second-run pictures for their use at the Plaza. They stated they could charge an adult evening admission price of 25 cents if they had second-run pictures, and contrasted Schine's operation of many theatres with their own of but one theatre. Schine replied that every situation had to take care of itself, and stated "they (Schine) didn't have enough product themselves" (R. 2202, 2203). When Schine inquired whether Cohen and Gaby would sell the Plaza, they replied it was the only source of their income (R. 2203). They then asked Schine to trade them a theatre in some situation which was too small for his company. He replied that he did not know of any at that particular time, but would get in touch with them if he learned of such a situation (R. 2204).

Walter A. Smith, a former Schine manager (R. 1860–61), operated a small theatre in Addison, New York, about 12 miles from Corning, from 1937 to 1940 charging an adult evening admission price of 25 cents per person, and children's admission of 10 cents. At that time the Palace theatre of Corning was charging an adult evening admission of 25 cents, with a children's charge of 10 cents (R. 1862–63). The Fox theatre at Corning charged a balcony admission price of 25 cents and an orchestra admission price of 40 cents, and the State Theatre was at the same time charging an orchestra admission of 20 cents. Both theatres were charging 10 cents for children. The major pictures played first-run in Schine's Corning theatres 30 days ahead of Addison (R. 1863, 1864, 1868).

In the year 1937 the Schine theatres in Corning, i. e., the Fox and State, issued a student ticket at a 15-cent per person admission price (R. 1864–65), which tickets were distributed in Addison by one of the Schine theatre managers (R. 1865). Such tickets were honored by the defendants for one and one-half or two years (R. 1865,* 1868). Smith protested against the student ticket practice to Harry Seed, Warner branch manager at Buffalo (R. 1865), to E. K. O'Shea of Metro's Buffalo exchange office (R. 1289), and to Sidney Samson, exchange manager of Fox at Buffalo, because the practice diminished the attendance of Addison high school students at his theatre (R. 1866). They advised him to adopt the same

* Such tickets were not good for use on Saturdays or Sundays, but were good any other evening of the week (R. 1865).

tactics; but when he replied that he couldn't because of his small seating capacity, and requested permission to drop to a 10-cent per person admission price, this requested cut in his admission price was refused (R. 1866–68).

Cortland, N. Y.

(Pop. 1940, 15,881—R. 2573)

Schine owns all the theatres in Cortland. It has owned and operated the State, a 1,632 seat house, since 1930. In September of 1932 it acquired the other two theatres in the town. One, the Temple, has 588 seats. The other, the Cortland, has been kept closed since acquisition and converted to commercial use (Int. Ans. 17, 18, R. 225).

According to standard road maps, the towns of Groton and Marathon are respectively about 12 and 14 miles from Cortland. Although the 1933–34 Schines-United Artists deal did not provide for clearance over Groton (Ex. 281, R. 3827), subsequently Schine was able to secure a clearance from United Artists over Groton (Exs. 958, R. 4395, 959, R. 4397).

For many years, the major distributors gave Schine's theatres in Cortland a 30-day clearance over Groton and Marathon. Loews' branch manager regarded this clearance as excessive, and in May of 1939, recommended to his home office that the clearance over Groton be reduced to 14 days. (Ex. 488, R. 3920). But many of the distributors, including Metro, continued to give Schine this clearance (Exs. 618, R. 3952, 958, R. 5066, P. 202, 5862, W3, R. 4429, W34 (1), R. 4565)).

The distributors also gave Schine's theatres in Cortland a clearance over Tully, a town in which

there was no motion picture theatre (Exs. 226–229, R. 3813–22). Such clearance of course had the intended effect of deterring potential competition in Tully, especially since this clearance was commonly part of a franchise deal.

DELAWARE, OHIO

(Pop. 1940, 8,944—R. 2574)

In Delaware, Schine acquired the Strand theatre, 777 seats, in January 1936. H. Bieberson owned a 50% interest until January 11, 1940. Schine acquired the other theatre in the town, the Star, 266 seats, in March of 1938. Schine kept the Star closed, opening it occasionally or part time (R. 234).

When Schine acquired the Star they had the vendor agree not to compete in Delaware for 15 years (Ex. S. 72, R. 5293).

At the time Schine acquired the Strand from Bieberson, they secured a covenant from the latter not to compete in Delaware during the term of the lease on the premises "and any extension or extensions thereof." (Ex. S. 70, R. 5287). At the same time Schine obtained a similar agreement from Bieberson not to compete in Athens, Ohio. (Ex. S. 69, R. 5285).

EASTON, MARYLAND

(Pop. 1940, 4,528—R. 2574)

In October 1938 Schine acquired both of the theatres in the town. In 1940 Schine surrendered the lease on one of the theatres to the county commissioners and began construction of another theatre (R. 240).

Fostoria, Ohio

(Pop. 1940, 13,453—R. 2574).

In 1935, the Buck brothers were operating the Colonial which is now known as the State (R. 1368), and a Mr. Kahn operated the only other theatres, the Roxy and Civic. In May of 1936 the defendants acquired a 50 percent interest in the Civic and Roxy (Int. Ans. 17, 18, and 23, R. 235). In December 1935, Arthur Buck came to Mooney, Cleveland branch manager of Warner's, and asked for a two-year deal for product because Schine was taking over the other houses (R. 1369, 1371, Ex. 559, R. 3946). In March 1936, Mooney took a signed application for a two-year deal and sent it to his home office, recommending acceptance (R. 1371–72). Buck then had Warner's first-run product for the 1935–36 season (R. 1371-72, Ex. 635–B, R. 5447). [The home office rejected the application, and Mochrie, assistant to Warner's Eastern sales manager (R. 1403), telegraphed Mooney on April 1, 1936, that Buck could be offered only one-half of one season's product and that the other half would be sold to Schine (R. 1383, Ex. 561, R. 3497). Mooney, accordingly,] But Warner's sold Buck only one half the product (R. 1377), even though the deal later sold to Schine involved considerably less money than Warner's were getting from the Bucks with whom they had been doing business a number of years (Ex. 563, R. 1398,

5417, 567, R. 3948, 568; Cf. Ex. 566, R. 3948, 635A, R. 5443–4). In April of 1937 Warner's also sold Schine a repeat run of the product played first-run by the Bucks (Ex. 635–A, R. 5443).

In May of 1937 the Bucks and the defendants made a pooling arrangement under which the defendants were to buy and book the films for all three Fostoria theatres for 5 per cent of the gross receipts (Ex. 89, R. 3791) and split the profits equally with the Bucks. The Roxy was closed permanently in 1938 (Int. Ans. 17A, 18, 23, R. 235). The Roxy lease, made in 1935 for a five-year term (Ex. 930, R. 5251), was renewed in 1940 for another five years with the following provision:

> 12. It is expressly agreed by and between the parties hereto, for and as a part of the consideration hereof, that first parties (lessors) will not, directly, or indirectly, let, lease or rent any real estate owned or controlled by them, within 500 feet of the premises herein above described, for theatre or picture show purposes, during the time this lease shall be effective.

It also contained an option of renewal for another five years (Ex. 930, R. 5251).

Geneva, New York

(Pop. 1940, 15,555—R. 2573)

Prior to 1939 the only theatres in Geneva were the Geneva, Regent and Temple, all controlled by Schine. The Temple was closed and the Regent was operated on a week-end policy in the summer time (R. 912–13, Int. Ans. 17A, 18, R. 226). The Park Hotel in Geneva was converted into a theatre by Louis Dipillo and opened in October 1939 (R. 968–9, 977). In August 1939, Dipillo and Richard De Toto, who was then operating a theatre in Clifton Springs (R. 910), went to Buffalo to buy product for the Park (R. 910). They stopped at the offices of United Artists, Paramount and Warner (R. 910–915, 944–947), in each instance asking for 1939–40 second-run for the Park (R. 911–12, 915–920). At that time Schine had no second-run policy in Geneva (R. 911–12). Lehman, branch manager of United Artists offered De Toto and Dipillo the 1937–38 and 1938–39 second-run product for the Park (R. 973), saying that Schine had already reserved the current (1939–40) second-run in Geneva (R. 912). When De Toto reminded Lehman that Schine had no second-run policy there, the latter replied that Schine had seen fit to reopen the Temple and had reserved second run for it (R. 911–12). The Temple did not reopen at that time and has been continuously closed from 1931 to 1942 (R. 912–14).

Paramount first offered Dipillo and De Toto first-run pictures of the 1937–38 and 1938–39 releases (R. 973–5), and when the salesman called on De Toto at Clifton Springs in August or September of 1939 and told De Toto that he could not sell the Park any current second-run pictures but the old pictures and some first-run Schine rejects were available (R. 915–16). At about the same time, the Warner exchange sent its salesman Minsky to see De Toto at Clifton Springs, and he offered De Toto a deal to read *either* second- or third-run, depending upon whether Schine reserved the second-run (R. 947).

Before the Park opened, Schine's Regent charged 10 and 25 cents, but after the Park began operating the adult admission price at the Regent was lowered to 20 cents (R. 916–17). The Park operated only about three or four months, and when it closed the adult admission price at the Regent was raised to 30 cents (R. 917).

769811—47——11

Harlan, Kentucky

(Pop. 5,122–R. 2574)

In 1938 Grover Scott was operating the Margie Grand in Harlan (R. 758) and the Liberty in Pikeville, Kentucky (R. 744). Price Coomer was operating the New Harlan in Harlan (R. 849).

In the course of his operations as a movie exhibitor, Scott had experienced an increase in film rentals from year to year (R. 759). As part of his Corbin deal with Schine,[1] he entered into an agreement with them in November of 1938 whereby for 5 per cent of the gross receipts the defendants agreed to buy and book pictures for the Margie Grand and Liberty (Exs. P. 20, R. 756, 3772; P. 25, R. 830, 3777). After this contract was made, Scott found that the defendants were able to get rebates on film rentals which he, as an independent operator, had not been able to secure. As a result, his film rentals were lower than when he had operated independently (R. 760–61). He found, however, that he did not benefit by this arrangement because of the fee charged by Schine for their services (R. 773). In August 1939, the defendants acquired the Liberty in Pikeville (Int. Ans. 17–A, 18, 23, R. 239), and in January 1941 acquired a half interest in the Margie Grand, giving Leon Scott, the son of Grover and the then owner, a contract as manager (R. 769; Int. Ans. 17–A, 18, 23, R. 238).

[1] See Corbin, p. 30.

Coomer had operated the New Harlan in opposition to the Margie Grand since 1934 (R. 861). Since at least 1936, Coomer was the regular first-run customer of Warner Brothers (R. 849, 864–5). For the 1941–42 season, Warner and the other film companies were selling their pictures as they were released in blocks of five (R. 849). Without giving Coomer an opportunity to negotiate for the second block of five, Warner sold that block of five to Schine (R. 849–50). This was also true of the third block (R. 852–54). Coomer, therefore, made no further attempts to continue his first run of Warner product (R. 850, 869). Prior to the time when Schine began to buy pictures for the Margie Grand, the latter had not played a second-run of the same product which Coomer played first-run at the New Harlan (R. 854, 867–68). After that time the Margie Grand played on second-run the pictures which played first-run at the New Harlan (R. 854)[*] and Lazar and Hensler tried to get Coomer to sell his theatre to Schine (R. 857).

[* In response to an inquiry from the home office as to whether or not this run should be sold (Ex. 597, R. 3949), the Warner branch wrote on December 13, 1940:

"* * * in regards to selling Schine for second run in Harlan, Ky., if there is any possible way of getting out of selling this account we would greatly appreciate it. We have a very good first run in this situation who pays us tops for this size town and we definitely know it will hurt him considerably to sell a second run in this situation * * * upon checking up we find there is no contract existing for second run product at all in this particular town" (Ex. 598, R. 3949).

To which the home office replied "we intend to sell Schine second-run in Harlan" (Ex. 599, R. 3950).]

Unsuccessful in this effort, they went to Coomer's landlord, while Coomer's lease still had some time to run, and attempted to persuade him either to break Coomer's lease or to make a lease with them to be effective after the expiration of Coomer's lease (R. 878–80). The landlord refused (R. 880).

Ilion, New York

(Pop. 1940, 8,927—R. 2573)

In 1925, Young and Whitney, Inc., built the Capitol Theatre in Ilion. They also owned the Opera House and Big Ben theatres, and leased the Temple (R. 2364, Ex. 871; R. 5221). Herkimer (1940 population 9,617, R. 2573), located three miles east of Ilion, had two theatres, the Liberty and Richmond, which were acquired by Schine in 1925 (Int. Ans. 17–A, p. 5, R. 227). The Richmond has been kept closed since 1933 (Int. Ans. 18, p. 5, R. 227).

The Capitol was a magnificent theatre; it had about 1,300 seats, 200 of which were in the balcony, and it cost over $300,000 (R. 3499). The Liberty was about two years older than the Capitol and had 1,238 seats (Int. Ans. 18, p. 5, R. 227), some 600 of which were in the balcony (R. 2372–3). The Capitol and Liberty both charged the same admission prices (R. 2373).

Robert I. Pierce, part owner and manager of the Capitol, testified that before 1928, which he recalled as the date Schine came into Herkimer,[1] there was open booking between the two towns (R. 2365), but that in 1928 Schine took clearance for Herkimer over the Capitol in Ilion (R. 2366). This clearance apparently persisted throughout

[1] According to the interrogatory answers (I. A. 17–A, R. 227) Schine acquired the Herkimer theatres in 1925, but the exact date is immaterial in any event.

the operation of the Herkimer and Ilion theatres by Fox Metropolitan from 1929 to 1933 (R. 2385–87), and was 14 days at the time Young and Whitney resumed operation of the Capitol (R. 2382, 2385–6).[2]

During the period from 1933 until the time Schine took over the Capitol, all the major companies gave Schine's Herkimer theatre clearance of 14 or 10 days over the Capitol at Ilion.[3] Warner (R. 2370–73), Paramount (R. 2373–75), RKO (R. 2375), Metro (R. 2377) and Universal (R. 2377–78) sold their product to Schine at Herkimer with protection over the Capitol before they would sell to the Capitol. These companies refused to reduce or eliminate the clearance despite the efforts of Pierce when negotiating the Capitol contracts (R. 2373–78). In 1935, in response to one such request Fox agreed to reduce the clearance to 10 days if all the other distributors would do likewise (Ex. 873, R. 4378) but at no time was Pierce ever given an opportunity to discuss terms except on the assumption that the Capitol must follow Herkimer (R. 2373–78). [United Artists held up contracts for the Capitol Theatre in February 1936 because:

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[2] Young and Whitney leased the Capitol to Fox Metropolitan at the same time Schine leased the Liberty and Richmond (R. 2365–66; I. A. 17–A, R. 227), but got the Capitol back shortly before Schine resumed operations in Herkimer (R. 2363–67).

[3] In some instances the clearance was reduced from 14 to 10 days by RKO (Exs. 874–A to D, R. 5575–78) and Warner (Exs. 875–A to E, R. 5579–86); in the case of Fox it remained at 14 days (R. 2384, Exs. 877–A to E, R. 5591–95), while with Paramount it started at 14, dropped to 10, and went back to 14; Metro was always 10 days.

We do not want to encounter any difficulty with the Schine Circuit insofar as clearance is concerned; therefore, we want to be definitely assured that the clearance as submitted in the contracts is satisfactory to the Schine Company (Ex. 292, R. 3833)].

In December 1936, an agreement was entered into between the owners of the Capitol and Schine (Ex. 871, R. 5221) covering the sale of the fee of the Capitol, the fee to commercial property (formerly the site of the Opera House), and the lease of the Temple, and in May of 1937, as a condition of the sale, Frank C. Whitney and Robert Pierce agreed not to compete with the Schines in Ilion or within a radius of 35 miles of Ilion for 10 years (Ex. 872, R. 5223). The final transfer apparently did not occur until August 1937 (Int. Ans. 17–A, 18, p. 5, R. 227). The Temple was closed when acquired and apparently has remained closed ever since but in April 1942, the defendants took another lease on it for a five-year term at an annual rental of $1,750.00 (Ex. 928, R. 5246).

Kent and Ravenna, Ohio

(Pop. 1940, Kent, 8,581; Ravenna, 8,538—R. 2574)

In 1936 there were two theatres in Kent, the Kent and the Opera House operated by different independent operators (R. 1401). In that year in Ravenna, Ohio, there were also two theatres, the Ravenna and Ohio, both operated by the independent who had the Kent theatre at Kent (R. 1401). The defendants acquired the Opera House in June 1936 and closed it in September 1937 (Int. Ans. 17-A, R. 235). Prior to the 1937-38 season the Kent, Ravenna and Ohio had been served with Warner pictures for many years (R. 1401-02). But no Warner pictures were played in those towns during September to December of 1937 because Mooney, the manager of the branch which served them, was instructed by either Andy Smith, Warner's Eastern sales manager, or Mochrie, Smith's assistant, not to negotiate any deal for Kent or Ravenna (R. 1401-06),[1] and Mooney, accordingly told the manager of the Kent, Ravenna, and Ohio theatres that he was not in a position to negotiate a deal (R. 1404-05). Schine acquired these three theatres in December 1937; the Ohio which was closed when acquired was remodeled and re-

[1] Smith, who testified for the defendants, did not deny giving such instructions or explain the reason for them (R. 2782-86). Mochrie was not produced by the defendants as a witness.

opened in June 1941 (Int. Ans. 17–A, 18, 23, 14; R. 235–6). When the defendants' five-year lease on the Opera House, which apparently had remained closed, expired in 1941 it was renewed for another five years (R. 2521–22).

Lexington, Kentucky

(Pop. 1940, 49,304—R. 2574)

Lexington is the third largest city in Kentucky (Federal Census, 1940). Since September 1940, Schine has had all the moving picture theaters in the city (Int. Ans. 17 A, 18, 23, R. 238). In 1935 Harry Schwartz was the owner and operator of the Opera House (R. 2025), and the five other theaters then operating were, the Kentucky, Ben Ali, Strand, and State (operated by Phoenix Amusement Co.), and Ada Meade (operated by one Switow) (R. 2025–26). The Kentucky and Ben Ali were the first-run houses; the Strand was a second-run house (R. 2026). Schwartz's Opera House was a third run, followed by the State and Ada Meade (R. 2027). In November 1936, the defendants acquired the Ben Ali, Kentucky, Strand, and State (Int. Ans. 17 A, 18, 23, R. 238).

Schwartz had United Artists first run of the 1934–35 season, some of which he was playing in 1936, because of lateness in delivery by United Artists (R. 2026–28). In 1936 he had a second-run contract of Metro for the 1934–35 season (R. 2028), and a third-run Metro contract for the 1935–36 season (R. 2028). In the fall of 1936 he asked Metro for a third-run contract for the 1936–37 season (R. 2028). Without being given an opportunity to have an offer considered for third run, he was told by Booth, Metro's branch manager, that he would not be able to get third

run because Schine had bought the third as well as the first two runs (R. 2028–30). Schwartz had to take a fourth-run Metro contract (R. 2030). The State played the Metro third run ahead of the Opera House (R. 2030–31).

In 1935 the Kentucky and Ben Ali were charging 40 cents admission at night and 25 cents at matinee; the Strand was charging 25 cents at night and 15 cents matinee. The State and the Ada Meade charged 10 cents at all times (R. 2026). The Opera House was charging 15 cents at night and 10 cents matinee (R. 2026). When Schwartz played United Artists pictures first run, he raised his prices to 25 cents at night (R. 2027). In the fall of 1936 the admission prices were the same except that the State was charging 15 cents at night and 10 cents at matinees (R. 2030). Schwartz was then following the State, as well as the Kentucky, Ben Ali, and Strand in the exhibition of major pictures (R. 2030). In the summer of 1937 and again in the summer of 1938 Schine cut the admission prices of the Ben Ali to 27 cents at night in the balcony and to 15 or 16 cents matinee in the balcony, and the Strand to 17 cents at night in the balcony and 27 to 22 cents main floor, and matinee 16 cents all over. Schwartz meanwhile retained his regular 16 cents night and 10 cents matinee price (R. 2037–8).

Schine's contract with Fox for their 1936–37 first-run product provided for minimum admission prices in Schine's Lexington theatre for the first-run showing of Fox pictures (Ex. 192, R. 5364). Despite the existence of this contract, Schine cut its admission price below the minimum prices fixed (R. 2030–33). Schwartz complained

to Fox and Paramount about these admission price cuts by Schine (Ex. 209, R. 3812), and the Fox branch manager brought these cuts to the attention of the Fox home office (Ex. 200, R. 3810), advising that Schine's:

> * * * are advertising these prices (16¢) exclusively within a radius of sixty miles of Lexington, with the result that all surrounding towns are complaining to us and other distributors.

The home office in turn complained to Schine about these cuts, calling attention to the fact that they were in violation of the contract (Ex. 201, R. 3811), but Myer Schine merely replied that the cuts were "quite essential and proved to be beneficial" (Ex. 202, R. 3811). Fox then omitted all minimum admission price requirements in the Schine second- and third-run contracts for the succeeding seasons (Exs. F 49, R. 5955, F 122, R. 6056), while at the same time providing in its contract with Schwartz's Opera House for minimum evening adult admission prices of 15 cents for that theatre (Ex. 829, R. 5557). In the same period, George Lynch complained to Metro that Schwartz was charging only 10 cents at night (Ex. 455, R. 3916). [The local branch manager of Metro, after advising O'Shea, his district manager, that Lynch's claim was false, went on to say:

> In my opinion the situation in Lexington is very bad. While it is not my desire to suggest any changes of theatre operation where it tends to lessen our gross, nevertheless, Schine's policy is materially affecting the surrounding towns. For instance, the price at the Ben Ali is 16 cents balcony, 22 cents main floor matinee and 22 cents

balcony, 33 cents main floor at night with practically all changes double bills.

The Strand, second-run, plays some slough first-runs and always double bills at 16 cents at all matinee, and 16 cents balcony, 22 cents main floor at night. State—10 cents matinee and 16 cents at night.

When we sold Mr. Schwartz of the Opera House fourth-run in Lexington, Schine's were not operating under this policy. It has made it very difficult for the Opera House to continue under the present contract. He is going to try a few more pictures and then if he cannot possibly stand the prices charged, it will be necessary to make an adjustment. As above stated, he is charging 10 cents matinee and 16 cents at night, playing fourth-run after Schine's double bill at the Ben Ali, Strand, and State on a comparable admission price. (Ex. 456, R. 3917).

He received the following reply on September 1, 1937 (Ex. 457, R. 3918):

When I wrote you regarding admission prices in the Opera House, Lexington, it was not with any thought of an adjustment for this theatre.

Insofar as the Opera House charging 10 cents balcony and 16 cents main floor to meet the competition, I would like to have the gentlemen who operate this theatre understand that M-G-M pictures are not being shown anywhere at night for 10 cents and we shall expect him to conform to the prices on his contract. Two wrongs do not make a right and this house going into a 10-cent policy would only force the Schine house to cut their price to meet the wrong kind of competition.]

After November of 1937, Schwartz had no first run of any major company and all the major product he played followed the Schine houses (R. 2038).

During these periods of reduced admission prices by Schine, Schwartz had to play most major product at admission prices comparable to what persons in Lexington could see the same pictures for at the Schine theatres on a much earlier run (R. 2030–33, 2036, 2038). Furthermore, during this period of reduction of admission prices at the Ben Ali and the Strand, the defendants were buying first-run product under contracts which permitted them to play first run at the Kentucky or the Ben Ali or the Strand, as they wished [Ex. W. 4 (79), R. 4534, Ex. R. 2 (51, R. 4864)]; or first run at the Ben Ali or the Strand or the State as they desired (Ex. F. 49, R. 5955); or first run at the Kentucky or the Ben Ali or the Strand or the State as they desired (Ex. F. 50, R. 5956); or second run at the Strand or the State as they desired [Ex. W. 4 (80), R. 4535]; or third run at the Strand or the State as they wished [Ex. W. 4 (81), R. 4536].

The rental terms for the Fox third run for Opera House for the 1937–38 season (Ex. 829, R. 5557), approximated or were greater than the terms called for in the Schine 1937–38 Fox contract for second run in the Ben Ali, Strand, or State (Ex. F. 49, R. 5955). The rental terms for the Opera House for fourth-run Warner's product for the 1939–40 season were greater and more onerous than the rental terms for Schine's third run at the State or Strand [Ex. 642–A, W–4 (81). R. 4536].

Schine acquired the Opera House in September 1939 (Ex. 823, R. 4355), as part of the deal by which it got Schwartz's theatre at Paris. The agreement of sale contained a covenant by the Southland Amusement Company, Harry Schwartz, Vernon K. Schwartz, and George J. Schwartz that they would not

> "for and during a period of fifteen (15) years from and after the date hereof, be or become engaged in or participate or have any interest of any nature whatsoever in, the motion picture, theatrical or amusement business in the capacity of owner, employee, partner, stockholder or in any other manner whatsoever, either directly or indirectly, in any town or city in the State of Kentucky, in which the Lessee or any of its affiliated or associated companies are now engaged in business, provided, however, that this covenant shall not prevent the Lessor or the Stockholders from investing in stocks or securities listed upon any recognized stock exchange" (Ex. 823, R. 4355, 2048–49).

At the time of the covenant the defendants were engaged in the theatrical business in Corbin, Harlan, Maysville, Middlesboro, Paris, Pikeville, Lexington, and Richmond, Kentucky (Int. Ans. 17 A, 18, 23, R. 238–39). The record does not indicate whether the defendants or their associated companies engaged in other kinds of business in other places in Kentucky, but the covenant is broad enough to include such places if they existed (R. 920, R. 2048).

In September 1940, Schine acquired the sole remaining competing theatre in Lexington, the Ada Meade (I. A. 17 A, R. 238).

Little Falls, New York

(Pop. 1940, 10,163—R. 2573)

There are only two theatres in this town, the Rialto, owned by Schine since 1925 and the Hippodrome, acquired by it in 1936 (Int. Ans. 17–A, 18, and 23, R. 227–28). The Hippodrome was closed for about six weeks prior to September 1, 1934, upon the death of its then owner, William J. Wood (R. 1722, 1738–39). Thomas E. Warne, a former theatre manager for Schine (R. 1722) then became associated in the management of this theatre with Wood's widow, Mrs. Marion D. Wood (R. 1722, 1724). It had been operating on a second-run policy prior to Wood's death (R. 1722). At that time the Rialto was playing the first-run product of all major companies except United Artists; that is, the Rialto had the first-run features of Fox, Metro, Warner, RKO, Paramount, Columbia and Universal (R. 1722–23).

After Warne took over the management of the Hippodrome, in attempting to secure additional second-run product for the Hippodrome (R. 1724–25), he went to Albany, New York, in September 1934 (R. 1724), and saw the following exchange managers: Halligan of RKO (R. 1293–4, 1724); Pielow of Metro (R. 1289, 1724); Grassgreen of Fox (R. 1214, 1724); and R. S. Smith of Warner (R. 1325, 1724). He informed each that he was about to reopen the Hippodrome and

requested their product for second-run exhibition at his theatre. Halligan and Pielow said they had not closed their first-run deal for Schine's Rialto theatre and were not ready to make a deal for second-run (R. 1724–26). Warne requested that they notify him when ready to negotiate the second-run deal and Halligan promised to do so (R. 1725). Grassgreen and Smith also stated they were not then ready to make a deal for second-run, and Warne requested them to notify him when they were ready to make definite arrangements for their product, as he was in the market for second-run pictures (R. 1725–26). Halligan was again asked about feature product at the time Warne purchased the RKO short subject pictures from him in the fall of 1935. Warne wanted features, and Halligan wanted only to sell him short subjects, saying he wasn't quite ready to sell the feature product (R. 1748–49). He heard nothing further from these exchange managers with regard to feature pictures, and made repeated trips to their Albany offices for over a year, between October 1934 until October 1935 (R. 1727–28). None of the managers or salesmen of these four major companies ever offered him an application for their pictures nor did they ever contract to sell him their product, either first- or second-run (R. 1728–29). During the period from September 1934 to June 1936, none of this second-run product was ever used at the Rialto theatre there (R. 1736–37).

He continued the operation of the Hippodrome with Paramount, Columbia, Universal, and independent product (R. 1727) which he used on

a double-feature program policy (R. 1730) as the Rialto was also playing double features on its first-run program policy (R. 1729). During the 1934–35 season, he also had contracted for about 20 United Artists pictures on first-run (R. 1722–23, 1730) and whenever he played one of the United Artists' pictures, which he used at the rate of about one every three weeks, he played such pictures on a single-feature program policy, using short subject pictures with it (R. 1730–31). He lost the United Artists first-run to Schine in the 1935–36 season (Ex. 718 H. R. 4310–11, 2510).

Warne continued double-featuring his second-run pictures until December 1935, or January 1936 (R. 1730). From then until he closed the the Hippodrome in June 1936, he intermittently played double and single-featured pictures, for the reason that there were times in that period when he could only secure one feature picture (R. 1731). He closed the Hippodrome for the summer, to make alterations (R. 1740) for lack of sufficient salable product to make any money, and because he and Mrs. Wood were running short of funds (R. 1731).

When Warne commenced operating the Hippodrome in September 1934, it charged evening admission prices of 10 cents for children and 20 cents for adults (R. 1723); the Rialto charged evening admission prices of 10 cents for children, 20 cents in the balcony, and 30 cents in the orchestra for adults (R. 1723). There was a short period of time, in the spring of 1935, when Warne resorted to the practices of selling on week ends "Family Tickets," good for one week,

whereby one adult admission payment entitled two persons to enter the theatre (R. 1731–32, 1742–43).

After the 1933-34 season, the clearance which defendants' Rialto theatre secured over the Hippodrome became increasingly onerous, finally becoming 90 to 120 days for most of the producer companies, during Warne's operation of the theatre (R. 1723–24).[1]

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[1] The Rialto, acquired by Schine in 1925, had been under the operation of Fox Film Corporation, through one of its affiliates, from 1929 to 1933 (I. A. 17–A, 18, and 23, R. 227). The Warner and First National contracts for the first-run sale of their products to the Rialto theatre in the 1932–33 and 1933–34 seasons provided only 60 days' clearance over the Hippodrome (Ex. 635 G, R. 5453–4); but in the 1935–36 season, in a contract with Schine approved August 16, 1935, this clearance was extended to 90 days (Ex. 635 I, R. 5457).

The Paramount contract for the use of its product first-run at the Rialto in 1931–32 contained no clearance provision against the Hippodrome (Ex. 339 E, R. 5396); but the next season's contract with Schine provided 90 days' protection over second-run (Ex. 339 F, R. 5397); the 1933–34 season contract carried the same clearance provision (Ex. 339 G, R. 5398) as did the 1934–35 contract (Ex. 339, H, R. 5399, 2531, 2881).

In the 1931–32 season, Wm. J. Wood had Columbia product first-run at the Hippodrome (Ex. 672–A, R. 5481); in 1932–33 it played first-run at the Rialto with 60 days' clearance "over all other theatres in Little Falls" (Ex. 672–B, R. 5482); in 1933–34, by contract approved November 2, 1933, Schine obtained this product first-run for the Rialto with "120 days' [clearance over] City of Little Falls" (Ex. 672–C, R. 5483); this provision was carried into the Schine-Columbia contract for the Rialto, Little Falls, for the next season (Ex. 672–D; R. 5484); being reduced to 90 days in the 1935–36 and 1936–37 season contracts (Ex. 672–E, F, R. 5485–6).

Wm. Wood at the Hippodrome had contracted for all the

J. G. Selmser, assistant treasurer and director of Schine Theatres, Inc. (R. 1734), called on Warne in June 1936 and asked why he had closed the theatre. Warne replied that it would be remodeled during the summer. Selmser said he would make an offer for it if Warne "wasn't going to be too tough to do business with." Warne closed a deal for Selmser to take over the theatre at his second meeting with him, consisting

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features of Columbia for the 1931–32 season (Ex. 672–A, R. 5481). For the 1932–33 season, the Fox-operated Rialto had contracted for the 32 pictures available with an elimination privilege of 12 out of the lowest rental group of 19 (Ex. 672–B, R. 5482); yet Schine secured from Columbia a contract for the 1933–34 season providing for lower film rentals than had been paid by either Wood or Fox, and obligating Schine to play only 10 pictures (Ex. 672–C, R. 5483), but allowing the exhibitor the right to eliminate any picture from the lowest price allocation group.

At film rentals lower than those provided in the Columbia contracts with Wood and Fox-Metropolitan, in the 1931–32 and 1932–33 seasons, Columbia allowed Schine a contract in the 1934–35 season obligating it to take only 24 out of 48 feature pictures available and providing for 120 days' clearance (Ex. 672–D, R. 5484).

Schine's contract with RKO for the Rialto first-run for the 1934–35 season provided 120 days' clearance over the other Little Falls theatre, despite the fact that this contract was for only 35 pictures out of 50 available for contract from this company this season (Ex. R–14, R. 5810).

During this period Universal apparently gave Schine a clearance of 120 days, which during the 1936–37 season was changed to 90 (Ex. 1009, R. 4428). During this period United Artists gave Schine a clearance of 115 days (Ex. 281, R. 3827).

The Metro contract for the Fox-operated Rialto for the 1932–33 season had no clearance provisions against the Hippodrome (Ex. 604–A, R. 5419), but its 1934–35 contract

of sale of the good will and theatre equipment. Schine assumed payment of $1,300 of outstanding debts and paid Warne and Mrs. Wood a total of $400 to be divided between them (R. 1734–35).

Schine leased the Hippodrome theatre from the Odd Fellows' Temple Association of Little Falls for five years for $2,500 per year, beginning July 1, 1936 (Ex. 927, R. 5244), but kept the theatre closed most of the time during the rest of 1936 and 1937 (R. 1744).[2] In 1938 it was operated part time to February 5, when it was closed. In 1939 it was operated part time to May 20, then closed for the summer (Supp. Sched. to Int. Ans. 18, R. 243).

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for the same theatre with Schine gave the latter a 60 days' clearance over the Hippodrome, although the minimum admissions prescribed were lower than those set in its 1932–33 contract while operated by Fox (Ex. 604–A, R. 5419; 604 D, R. 5424).

[2] The lease contains as an express convenant:

"Said party of the second part (Schine Theatrical Company, Inc.) shall not be required to conduct motion pictures or shows in said theatre at any particular time. It may do so at such times during the term of said lease as second party so desires" (R. 5246). The lease contained an option provision providing renewal of it for another five year term, if notification was given 90 days of expiration, which option has been exercised (R. 2521).

Lockport, New York

(Pop. 1940, 24,379—R. 2573)

In December 1932, there were three theatres in Lockport (Int. Ans. 17 A, R. 228, 1523–25, 2656, 2657, 2660–61, 2638). The Palace, a very fine theatre (R. 2657), was the newest with a seating capacity of 1,800 (R. 1525). It was leased by Paramount upon its completion in 1925 (R. 2710, 2711, 2657). The Rialto had been converted from a skating rink to a garage, and later to a theatre which seated 1,500 (R. 1525). The Hi-Art was an old theatre, seating 1,100 (R. 1525), and had been converted from a business block (R. 1525, 2656). Schine acquired the Rialto in 1924 (Int. Ans. 17 A, R. 228) and in 1927 formed a partnership to operate all the Lockport theatres with Paramount (Int. Ans. 17 A, R. 228, 2638, 2658–59, 2711–13), under which Paramount and Schine agreed to split the profits, have Schine manage the theatres and buy and book the pictures (R. 2711–12). The Schine-Paramount partnership moved all the best first-run pictures from the Rialto to the Palace (R. 2660–61). For seven years prior to 1933, the Hi-Art had been continuously closed (R. 1525, 2660–61, 2712).

In December 1932, Schine was evicted from the Palace (R. 2712, 2659, 1524), and its pooling agreement with Paramount was terminated at the same time (R. 2713). In consequence, the

owners of the building immediately formed a corporation, known as Reliance Theatres, Inc., to operate the theatre (R. 1524–25; Ex. 173, R. 3806). Nikitas Dipson, who owned other theatres in New York, was a principal officer and stockholder (R. 1524–25, 1552–54).

Reliance commenced the operation of the Palace on January 1, 1933, playing Metro as its only major product (R. 1524–25). The Schine-Paramount partnership had made contracts for the other 1932–33 major product before that time (R. 2661–62). Because of a disagreement between Schine and Loew's, relative to the 1932–33 season, Schine did not buy or play any of that Metro product for any part of its circuit (R. 2880). For this reason the Palace was able to buy first-run Metro product for the 1932–33 season (R. 1525–26, 2880). The Palace opened with this Metro product (R. 1525), and continued for many months on a single-feature basis (R. 1536). The Rialto was then using all of the remaining major product as the Hi-Art remained closed (R. 1551).

[On December 28, 1932, Sydney Samson, Manager of the Fox Exchange at Buffalo (R. 1215–16), wrote a letter to Schelman, at the New York office (R. 1216), advising that theretofore Schine had operated both the Palace and Rialto, but was now running only the latter, as the lease on the former had not been renewed. He further stated that Schine had accordingly requested Fox to transfer to the Rialto all unplayed pictures assigned to the Palace. Samson stated that Fox would receive more income if the percentage pictures continued to be played at the Palace, and

that when the owners of the Palace Theatre building reopened the Palace, they would want this Fox product, but he did not object to transferring the unplayed Fox pictures from the Palace to the Rialto. In setting forth the reasons for his attitude, he said that Fox was serving Schine throughout the circuit and that he thought this was sufficient to overcome any objections to taking these pictures away from the Palace and playing them at the Rialto (Ex. P–173, R. 3806).]

With reference to the 1933–34 season, Reliance, through Charles E. Dickinson, its vice-president (R. 1525, 1554), whose father was the principal owner of the Palace (R. 1523–24), and other employees, made strenuous efforts to buy a major product for it. They called on various film exchanges in Buffalo (R. 1526), and in addition wrote numerous letters to the film companies (R. 1526).

Metro, on May 5, 1933 (R. 1527, Ex. 649, R. 4167), advised Reliance that it could not make a definite commitment for its 1933–34 product, but would keep the Palace in mind.

[On July 23, 1933, William F. Rodgers, who was then Eastern Sales Manager of Loew's, again wrote to Reliance stating in part as follows:

> In our negotiations with the Schine interests it will very likely be that we will have to give them consideration for our product at Lockport, as well as other situations, and as we are hardly in a position to forego or jeopardize the business from their other situations, and for the further reason that they have for a number of years been a very representative account, we feel that our interests would be best

served by giving them such consideration.

Under the circumstances, we are not in a position to offer you our 1933–34 product (R. 1529–30, Ex. 653, R. 4170).]

After Reliance received this letter, Dickinson went to New York and called on Rodgers of Metro (R. 1530–31, 2876). He told Rodgers that ever since Reliance had opened the Palace it had contracted for and had played the Metro product, that the Palace had done very well with this product, considering the type of the theatre and the pictures played, that under the Reliance management the Palace had given the Metro pictures long runs as single features and that he, Dickinson, hoped Rodgers would reverse the decision announced in his letter of July 23, 1933, as to the 1933–34 product and consider the fact that Reliance had been a satisfactory customer of Loew (R. 1531). Rodgers replied that "he would like to have his pictures played in the Palace Theatre, that Metro-Goldwyn-Mayer always liked to have their pictures played in the best house in any town, the most outstanding house" (R. 1531) but declined to deal with Dickinson (R. 2877–78).

On May 8, 1933, Universal wrote Reliance that it could not commit itself to the Palace because of a long-term franchise with the Schine theatres in that city, but was willing to negotiate as to pictures eliminated by Schine (R. 1528, Ex. 650, R. 4168). Paramount wrote Reliance on May 16, 1933, saying that it was too early to make plans for the next season, but Paramount would keep the request of Reliance at hand (R. 1528, Ex. 651, R. 4169).

Two weeks later, Paramount again wrote to Reliance saying that it would be impossible to offer its product for the 1933–34 season because of its partnership with Schine (R. 1529, Ex. 652, R. 4170) in the Rialto Theatre. The Lockport pool had been dissolved more than five months before this letter was written (R. 2637, 2713; Int. Ans. 17 A, R. 228). During the summer of 1933, the Palace was not able to contract for any major product first-run for the 1933–34 season (R. 1531).

After Dickinson returned to Lockport from his New York trip, he had a conference with John May of the Schine organization. The latter offered to buy the lease which Reliance had on the Palace (R. 1531). At the same time, May told him that Schine had a large volume of product and in order to play it Schine had to reopen the Hi-Art, which had been closed for seven years (R. 1533–34). About October 18, 1933, Dickinson received a visit from Howard Carroll (R. 1535, 1588), an employee of Schine who later became a district manager working out of the Rochester office (R. 1585, 1586). He told Dickinson that Schine was holding back the reopening of the Hi-Art to give him and his associates a few more days to decide whether they would accept Schine's offer to buy the lease on the Palace (R. 1588). Dickinson replied that they were not interested (R. 1588).

The Hi-Art then opened on October 21, 1933 (R. 1588). It continued operating until at least the spring of 1936, when Dickinson severed his connection with the Palace (R. 1523, 1536).

After opening the Hi-Art, Schine announced and advertised a playing policy there of major double features, first- and second-run, with several changes a week, at an admission price of 20 cents, and at times various give-aways (R. 1628–29, 1632, 1536–37, 1548). During October and November of 1933, the Rialto also played major double features, sometime with give-aways (R. 1629, 1632). After the Hi-Art opened, the Palace, charging 20 and 25 cents, was playing the remainder of the Metro 1932–33 product, independent pictures, and some major product of prior seasons (R. 1536–37). During the 1933–34 season, it contracted for several United Artists pictures for first or later runs. Most of them were 1931–32 and 1932–33 releases (Def. Ex. D–69 (R. 6150), D–81 (R. 6167), P–197 (R. 5857), D–107 (R. 6193), 717 (R. 4285); R. 1581–84).

With reference to the 1934–35 pictures, Dickinson and his associates again attempted to obtain major product (R. 1537). In the spring they wrote to all the major companies in Buffalo (R. 1537). They were solicited by no major company for first- or second-run of its product (R. 1537). During the summer of 1934, Dickinson went to New York City and saw executives of Metro, RKO, Paramount, Columbia, Warner, Fox, and United Artists (R. 1537–39, 1540–41, 1542, 1544). Rodgers, Eastern Sales Manager, told him that Metro was then negotiating with Schine and could not talk to Dickinson until they definitely knew the results of their negotiations (R. 1539). McEvoy, Eastern Sales Manager of

RKO,[1] told him that his company probably could do nothing as they were negotiating with Schine (R. 1294, 1539). Dickinson heard nothing further from them (R. 1540). J. J. Unger, Eastern Sales Manager of Paramount (R. 1239), told him that Paramount had no pictures to offer (R. 1540).

Rube Jackter, Assistant General Sales Manager of Columbia (R. 1603–04), told him that Columbia was not in a position to negotiate at that time (R. 1540, 1541). Dickinson heard nothing further from Columbia (R. 1541) until March 1935. The Eastern Sales Manager of Warner, Andrew W. Smith (R. 1325, 2783), advised Dickinson that his company was negotiating with Schine but that there might be a possibility of a split of the 1933–34 product and Warner would communicate with Dickinson later (R. 1541). Dickinson heard nothing further from Warner (R. 1541).

Harry L. Gold, Eastern Division Sales Manager of United Artists (R. 1243), told Dickinson that he was negotiating with Schine, they had not as yet signed the contract, and Dickinson would, therefore, have to wait until the negotiations were ended. However, United Artists never communicated with Dickinson (R. 1544–45) until March 1935. The result was that during 1934

[1] RKO, for the 1934–35 season sold Schine the pictures "that play the Rialto 1st run" to play at the Hi-Art second-run at a top rental of $17.63 for half of the pictures used, and $15 for the rest, with no minimum admission prices prescribed (Ex. R–16, R. 5812). Its first-run contract with Schine for the Rialto *or* Hi-Art committed the defendants to only 40 out of 50 pictures available for contract (Ex. R–15, R. 5811).

the Palace, under Reliance Management, did not have any 1934–35 releases of major product (R. 1545). It was not until March 1935 that the Palace succeeded in receiving a Columbia first-run deal for the 1934–35 and the 1935–36 seasons, and a number of 1934–35 United Artists contracts (R. 1545–46, 1581–82, 1583, 1584; Ex. D–47 (R. 6147), Ex. D–48 (R. 6148).

For the 1935–36 season, Dickinson wrote all the eight majors (R. 1546) and personally solicited at least one (R. 1545–46). He was not solicited by any of them either in the spring or summer for their product (R. 1546). Excepting Columbia and three United Artists pictures (Def. Ex. D–101, D–103, D–104, R. 6187, 6189–90; R. 1546), he had no 1935–36 first-run contracts with any of the majors (R. 1546), and never had a regular second-run deal (R. 1547). Dickinson terminated his connection with the Palace Theatre in the spring of 1936 (R. 1523).

His father died in December 1933, and executors were appointed early in 1934 (R. 1606). Among the assets was the interest in the Palace (R. 1607). In May 1935, the executors met with J. Myer Schine and John May to discuss the possibility of selling the Palace (R. 1607–8). Schine made an offer of $159,000 (R. 1609, Ex. 688, R. 4248). Considering this insufficient, the executors declined (R. 1610). One month later, J. Myer Schine again talked with one of the executors, but no deal was closed (R. 1613). On April 20, 1936, the property was sold at public auction after public advertisement (R. 1613–15) to Mr. Osborne, representative for Nikitas Dipson, for $151,427.79, with Schine the only other bidder

(R. 1613–15, 1617). The sale included the lease on the Palace, the stock in Reliance Theatre, Inc., and all other interest in the theatre, and was completed on May 20, 1936 (R. 1616–17).

Warner F. Thompson of Lockport was attorney for Dipson in 1936 (R. 1618). Willard McKay was then vice president and general counsel of Universal, and also did legal work for Schine (R. 1619, 1622–23, 1720). Pursuant to a telephone call which Thompson made to McKay, the two held a conference in the former's office in New York on June 16, 1936 (R. 1621–22). McKay suggested a pooling arrangement between Schine and Dipson of the Rialto, Hi-Art and Palace, and the closing of the Hi-Art (R. 1624). Schine was to receive 65 percent of the first $50,000 of profits and to have exclusive management of all the theatres because of his superior buying position (R. 1624–25). This offer was declined on June 18, 1936 (R. 1626). In July 1936, Schine and Dipson closed a deal with reference to the Palace, in consequence of which, Dipson transferred possession and operation of the Palace to Schine, sometime between August 1 and October 10, 1936 (R. 1618–19). The purchase price was $200,000 (Def. Ex. D–150, R. 5183; Int. Ans. 17 A, 18, R. 228).

Although the record shows that the Hi-Art operated only part-time after the fall of 1936, and that from 1925 to October 1933 it had been continuously closed (R. 1525, 2661, 2712), Schine renewed its lease on this theatre several times (R. 2517–18). The original lease of the premises made in 1926 was for a term of 10

years with a rental of $9,500 a year for the first five years and $10,000 for the rest of the term. It had a renewal option to extend the term 11 years at $12,000 a year. The defendants made a superseding lease of the premises in May 1933, for two and one-half years at an annual rental of $4,000. Other provisions were similar to those in the 1926 lease (Ex. 923, 924, 925, 926, R. 5241–44). In 1936 that option was exercised and in 1937 another agreement was made under which the defendants leased the premises for 10 years on the same terms, except that the rental was $5,500 a year (Ex. 926, R. 5243).

Malone, New York

(Pop. 1940, 8,743—R. 2573)

Since 1922 Michael Boumansour has owned the Plaza theatre (R. 2252–53; Int. Ans. 17–A, 18, and 23, R. 228). Between 1923 and 1928 he leased this theatre to another operator named Meehan, who in turn leased it to the defendants R. 2253; Int. Ans. 17–A, 18, and 23, R. 228), then operating the only other theatre in the town, the Grand. About 1931 the defendants remodeled the Grand, renamed it the Malone (R. 2253; Int. Ans. 17–A, 18, and 23, R. 228), and closed the Plaza (R. 2254). The Plaza lease expired in September 1936 and in 1935 John May told Boumansour the Plaza was condemned and Schine would discontinue rent payments (R. 2255). Boumansour then requested Schine to release the theatre to him. Schine refused to give it up (R. 2255) but continued to pay the rent and keep it closed (R. 2256). Boumansour remodeled the Plaza in the summer of 1936, starting repairs on the outside of the building a few months before the lease expired (R. 2256), spending about $20,000 (R. 2256) and reopened it about November 1936 (R. 2256), under his own management.

While he was remodeling, Boumansour visited all exchange managers located at Albany, New York, to find out what product was available (R. 2256–57). Eastman, branch manager of Paramount, told him that he would get enough Paramount

pictures because Schine had only used 65 per cent of that product in Malone in the past few years (R. 2257). Halligan, branch manager of RKO (R. 1293-94), said one-quarter of that product would be available to him, Schine having only used 75 per cent for a couple of years (R. 2257). The Warner branch manager, Smith, advised him not to reopen the theatre, but assured him of a few rejected pictures of the Warner company if he did reopen it (R. 2259).[1] Grassgreen, Fox manager (R. 1214), said that as his company had one account in the community from which it was deriving a good revenue, it was not interested in opening another account (R. 2260), but he might furnish the Plaza with a few Gaumont British pictures (R. 2260). Dana, Universal's manager (R. 1275), said [illegible]f half of the current product of that company would be available to the Plaza, and several pictures of the preceding seasons (R. 2261). Phil Fox, Columbia manager (R. 1603), gave Boumansour assurance of 20 of its pictures of the current season, the same amount from the releases of the two preceding seasons, stating that defendants had used only 60 per cent of Columbia product at Malone (R. 2262).

Boumansour opened the remodelled Plaza theatre the second week of November 1936 (R. 2262). About two weeks before opening, he saw Halligan of RKO again in Albany, informed him he was about to open the theatre, and was told by Halligan that it was impossible for him to do any

[1] Warner at this time, as part of its franchise deal with Schine, was giving them an elimination privilege of 13 pictures (Ex. 644A, R. 5206-5208C).

business with the Plaza theatre, and that his hands were tied up in this regard (R. 2263). Warner gave him similar information (R. 2263). Eastman of Paramount further added: "I am not going to be the goat. After somebody sells you the majors, I will do the same" (R. 2263). Pielow, Metro exchange manager at Albany (R. 1289), said that while nearly all their product was sold to Schine, a few rejected pictures might be available to Boumansour by the time he opened the Plaza (R. 2263). Grassgreen of Fox again told him that his company had one account in Malone and would not take on another (R. 2264).

When Boumansour opened the Plaza theatre in November 1936, he had no major product and could get none for his theatre operation during the fall of 1936 (R. 2265).[2] During this period the Malone double-featured major pictures during each week, making three to four changes per week, with single-features only on weekends (R. 2265–66). It played no second runs (R. 2264–67).

Before February 1937, Boumansour talked with Halligan (RKO), Pielow (Metro), Ayres or Smith (Warner), Eastman (Paramount), Grassgreen (Fox), Dana (Universal), and Fox (Columbia) relative to the possibility of getting second-run product for the Plaza theatre (R. 2319–20). Richard Struewe, then a Warner salesman (R. 2837), learned that Boumansour intended going into a second-run policy in Malone

[2] He got eight Warner 1935 pictures by contract approved December 30, 1936 (Ex. 908–E, R. 5623; cf. Release Sched. Ex. 645, R. 4109).

starting about May 1, 1937, and reported to Albany on February 4th that although Boumansour wanted half of the current (1936–37) pictures on second-run, he refused to consider this proposition but offered Boumansour 30 pictures of the preceding season's product. Boumansour, he reported, would not consider any proposition except a 30-picture deal on the current season's product (Def. Ex. D. 137, R. 5176A), but Struewe told Boumansour that if he wanted current product, he would have to take the entire group of 60 pictures (R. 2840–41). Struewe declined the 30-picture offer, knowing that it was his job to get additional revenue from the towns in this territory, notwithstanding the fact that a sale of 30 pictures second-run to Boumansour would have given the Warner company more revenue than it was then receiving in Malone (R. 2840).

In February of 1937 Boumansour obtained five first-run Metro pictures which had been rejected by Schine's Malone theatre (Ex. 906–A, R. 5606, 2511, 2266). At about the same time Paramount let him have five or six first-run pictures and three or four re-issues (R. 2266). In the conference he had with Pielow of Metro at this time relative to second run product, Pielow said he would answer him later after hearing from his home office. Grassgreen of Fox said his company would not be interested in selling second-run in Malone (R. 2269–70, 2314–15).[3] Halligan of

[3] Grassgreen (Fox) also wrote Boumansour on May 21, 1937, that he was not interested in serving second-run in Malone, it would cut into the first-run revenue of pictures served on a percentage basis under its franchise (Ex. 195, R. 3809).

RKO could not discuss a second-run for Malone at that time, and Phil Fox of Columbia postponed the question (R. 2270), as did the Warner exchange manager (R. 2271).

On June 30, 1937, Boumansour complained to the United States Department of Justice concerning his inability to get product (R. 2347). Earlier in June, Ayres of Warner's Albany office, telephoned Boumansour and said he had a contract in his office ready for his signature. Boumansour went to Albany, was shown the contract, a second-run deal for all of the 1936–37 pictures, and complained that the prices were too high (R. 2274). He was told by Ayres "either take it or leave it" (R. 2275). He again complained that he was giving Warner a present of $500 or $600 on the contract, but would rather do so than close his theatre, and signed (Ex. 863, R. 5568, 909, R. 5624). The application date was June 14, 1937. [It went to New York with the following branch office recommendation, dated June 22, 1937:

> Until about six months ago this theatre was under lease to Schine, who kept it closed. Mr. Boumansour, the owner, would not renew the lease unless the theatre was opened, which Schine refused to agree to. Consequently Mr. Boumansour opened the theatre and for the past several months has been running only first-run pictures, all of them being Schine rejects from former seasons. It now develops that he is unable to secure sufficient first-run product to operate the house on this policy, forcing him to a second-run policy or close the house, which he will not do as he has spent considerable

money remodeling it. He has applied to other distributors for second-run product and to the best of my knowledge at this writing has been unable to secure a contract. I believe the attached deal is the only one actually negotiated at this time. The terms of this deal, in my opinion, are excellent for second-run in this town and do not hesitate to recommend acceptance of same in so far as the terms are concerned. I have discussed this deal with Mr. Kalmenson and he suggested submitting same for approval but prefers for the time being at least, to spot book the pictures as per the terms set up on the contract. In other words, we will not forward the approved copy of these contracts to the exhibitor unless advised to the contrary. (Ex. 574, R. 3948C)].

The contract was approved on June 29, 1937. (Ex. 863, R. 5568). It called for a total guaranteed payment of $2,262.00 with four features to play at 35% and nine at 30% [(Ex. 574, R. 3948)]. After the Warner contract was made, Paramount also made a deal for second-run and was followed by Metro (R. 2275, Ex. 906-B, R. 5607).[4]

When the Plaza opened in November 1936, the Malone charged adult evening admission prices of 40 cents in the orchestra and 30 cents in the balcony (R. 2266), which seated 400 (R. 2266).

[4] Schine's Malone theatre had guaranteed Warner feature picture rentals of but $2,000 for first run in the 1935-36 season and $2,240 for first-run of the 1936-37 films (Exs. W-8, (8), and W-6 (17), R. 5783, R. 5752).

[5] The Metro contract, dated Oct. 8, 1937, was for the 1936-37 product, which was then no longer current.

When the Plaza started playing second-run product, the Malone cut the orchestra evening admission price to 30 cents and its balcony price to 20 cents (R. 2275–76). The Plaza was charging 25 cents (R. 2276, Ex. 863, R. 5568, 909, R. 5624). Schine's Malone then instituted a money giveaway night and Boumansour dropped his evening admission prices to 15 cents for the period between 6:30 and 7 p. m. (R. 2295). Later, about 1939, the Malone prices for first-run major product,* between 7 and 7:30 p. m. were 15 cents adult admission in both balcony and orchestra; and 15 cents balcony, and 25 cents orchestra, during the remainder of the evening; while Boumansour was compelled by his contracts to charge minimum evening admission price on second-run pictures playing 60 days later, of 25 cents (R. 2295–96, Ex. 907 A to E, R. 5614–18 RKO contracts, 1938–39, 1940–41, R. 2511–12; 905 A to E, R. 5601–05, Paramount contracts, 1938–39, 1940–41, R. 2511; 906 B to H, R. 5607–613, Metro contracts, 1938–39, 1940–41).

On January 10, 1939, defendants acquired an option to buy or lease on certain property on

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*During the 1937-38, 1938-39, and 1940-41 seasons, Schine's Malone theatre had first-run product of the following major distributors by virtue of master agreements or franchises:

Warner [Exs. W-4 (16), R. 4471; W-34 (14), R. 4578].

Fox [Exs. F-1, R. 4951; F-193, R. 4969; F-101 (18), R. 6005; F-162, R. 6094].

Metro [Ex. 981 (23); R. 5675, Ex. 618, R. 3952].

Paramount [Ex. P-213, R. 5873].

Universal [Exs. U-137 (14), R. 4663; U-207 (14), R. 4734].

R. K. O. [Ex. R-2 (15), R. 4829].

Columbia [Exs. C-102 (35), R. 5010; C-181 (71), R. 5131].

Pearl Street, Malone, New York, which interest terminated on February 10, 1939 (Int. Ans. No. 31, R. 254). The Plaza is located at No. 10 Pearl Street, Malone (Ex. 81, R. 5193). In the fall of 1939, at Albany, New York (R. 2297), George Lynch told Boumansour it would be better to lease his theatre to Schine and "let this fight be over with" (R. 2298). Boumansour said he would lease the theatre and stated his terms. Lynch left to make a telephone call. When he returned, he said he had telephoned J. Myer Schine, then in Florida, and the latter had agreed to lease the Plaza on the terms stated by Boumansour (R. 2299), which was a rental of $8,600 per year for the theatre (R. 2301), and a $70 per week contract as manager of the Malone theatre for one year (R. 2301).

Lynch again saw Boumansour in 1940, a few days before the deal for the sale of the Plaza theatre was to be closed (R. 2352–53). At that time, Boumansour furnished Lynch with a copy of an affidavit relative to his dealings with the defendants and major distributor that he had given to a representative of the United States Department of Justice in October 1939 (R. 2346–47). Willard McKay, Schine vice president (Int. Ans. R, 214), told Boumansour the proposed deal for the Plaza theatre could not be concluded unless the latter caused the original of the affidavit to be returned to him (R. 2353–54). Boumansour telephoned Seymour Krieger at the United States Department of Justice in Washington and unsuccessfully tried to withdraw the said affidavit (R. 2354).

On January 21, 1941, Boumansour agreed to rent the Plaza to defendants for $8,000 per annum, and to make a separate agreement not to engage in the motion picture business in Malone or within 20 miles thereof during the ten-year term of the lease (Ex. P–82, R. 3789).[7] On February 14, 1941, Boumansour fulfilled the above agreement by leasing the Plaza to Schine (Ex. 81, R. 5193, 2300), the lease provided that it operate a minimum of two days per week.

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[7] By the same agreement, Schine agreed to hire Boumansour for one year at $75.00 per week (Ex. P–82, R. 3789) and he managed the Malone theatre for Schine from February 1941 until the spring of 1943 (R. 2300–2302).

Maysville, Kentucky

(Pop. 1940, 6,572—R. 2574)

In January of 1938 Schine acquired a majority interest in the Russell theatre, 700 seats. In January of 1939 Schine acquired a majority interest in the other two theatres, the Washington, a 500 seat theatre and the Hollywood with 300 seats. In December of 1940 Schine acquired the remaining interest in these theatres. Another theatre opened December 1940 and closed shortly thereafter. Schine has kept the Hollywood closed (Int. Ans. 17, 18, R. 239).

At the time Schine came into the town, the Phoenix Amusement Company operated the theatres in the town (Int. Ans. 15, R. 222). In January of 1939 Schine secured from the stockholders of the Phoenix Maysville Theatre Company an agreement not to compete in Maysville for 15 years (Ex. S–74, R. 5141–2).

The record shows that Schine took clearances in Maysville, Ky., as high as 120 days over subsequent runs (Ex. F. 125, R. 6057).

Medina, Ohio

(Pop. 1940, 4,359—R. 2574)

In 1936 the Princess theatre, operated by Yudelvitz and Willis, seating 350, was the only theatre in Medina (R. 1407, Int. Ans. 17–A, 18 and 23, R. 235). For many years Mooney, then Cleveland branch manager for Warner (R. 1349), had solicited the business of the Princess each season but failed to sell it any pictures, including the year 1936 (R. 1407). About September 1936 a committee of the Masonic organization owning the Medina Temple building approached P. E. Essick, a theatre operator located in Cleveland, and asked him to survey the possibilities regarding placing a theatre in this building (R. 1449, 1450, 1476, 1479). After various meetings and negotiations with the committee (R. 1451; Ex. 1006, R. 4425), Essick and M. S. Fine (R. 1407, 1449–50, 1514) decided to construct a theatre in the Temple building (R. 1451, 1514; Ex. 1006, R. 4425), and committed themselves to the building owners' committee to that effect about the latter part of December 1936, or the first part of January 1937 (R. 1478–79). Prior to this time, Essick had, during the Fall of 1936, learned what product was being played in the Princess theatre (R. 1451, 1477–78), and that Warner, Columbia, Universal, and United Artists pictures were not being used in Medina (R. 1451–52).

In the latter part of December 1936, Essick talked to Mooney in Cleveland relative to obtaining Warner pictures for use in Essick's new theatre to be built in Medina (R. 1408–09; 1452–53). Also present in Mooney's office, was Benjamin Kalmenson, then central district manager of Warner, supervising its Cincinnati and Cleveland offices (R. 1326, 1408, 1452–53). Essick informed Mooney that he was about to close the deal to build a theatre in Medina and inquired whether he could count on having Warner product for use in the new Medina theatre (R. 1408–9; 1452–53). Kalmenson said definitely that he could count on having it. When Kalmenson and Mooney came into the office of Pine and Essick some time later, Kalmenson repeated to Pine his promise made to Essick and said "That goes double. The product is yours for Medina whenever you open up." (R. 1520).

Essick and Fine started the construction of the Medina Temple theatre in the last of February or early in March 1937 (R. 1407, 1453). The theatre, seating about 900, was not, however, completed and opened to the public until January 1938 (R. 1453). On March 18, 1937, Schine made a contract with Yudelvitz and Willis, owners of the Princess, to lease it and to erect a new theatre in Medina on other lands owned by them (Def. Ex. D–46, R. 5162), both theatres to be controlled by a corporation in which Schine and they would be equal partners. [On the same day, Lynch wired J. E. Flynn, Metro's district manager, requesting its product for Medina and its inclusion in the Schine Circuit franchise (Ex. 500, R.

3927).[1] He wrote F. D. Drew, Metro branch manager at Cleveland (R. 1287–88), on the following day to the same effect (Ex. 499, R. 3926).] On March 23, 1937, a committee of six persons, consisting of the directors of the Medina Temple building and Trustees of the lodges who owned it, wrote Myer Schine that his proposal to build a new theatre in Medina had come to their attention (Ex. 1006, R. 4425). They pointed out that revenue from a theatre in the Temple building was needed to prevent loss of their investment in that building and that they had, therefore, signed a contract with Fine and Essick "to start a picture show theatre in the Temple," after "two of the largest banks in Cleveland reported them as being one hundred percent responsible." Fine and Essick were to lease the theatre for twenty-five years "with a fair guarantee against a percentage." They implored Schine not to carry out his contemplated plan[2] to build "a theatre here after we have already started ours," saying that the success of their Temple theatre meant "saving the money our people have invested in the stock and the insurance and the life savings

[1] The Loew first-run product was included in the franchise by a deal sheet dated August 7, 1937 (Ex. 618, R. 3952) although Schine had no theatre in Medina at the time. The 50% interest in the Princess lease was not acquired until September 1937 (R. 1412, 1467, Int. Ans. 17–A, R. 235), and the proposed new theatre never materialized. The deal sheet describes the theatre covered merely as "Schine's."

[2] In July 1937 Myer Schine showed Fine and Essick a sketch of a proposed new theatre for Medina, but he never started actual construction of one there (R. 1513). Instead Yudelvitz spent a considerable sum remodeling the Princess (R. 1510).

of some who have personally signed notes for the Temple Company" (Ex. 1006, R. 4425).

Fine commenced negotiations for the United Artists product about the time construction of the theatre began (R. 1514–15). He saw A. C. Goodman, Cleveland exchange manager of that company (R. 1243–44), and its district manager, Bert M. Stearn (R. 1429), and asked for United Artists product for Medina (R. 1514–15). He was assured that this product would be available to this theatre (R. 1515). Late in the summer of 1937, prior to opening the Temple theatre, he saw Goodman and Stearn, and told them the Temple theatre would probably open around October 1937. He discussed the United Artists product available for the 1937–38 season and agreed on prices for the pictures (R. 1515–16). Later in the fall of 1937, Fine again saw Goodman, who inquired when the theatre would open (R. 1516–7). Fine told him it would be about November or December, and signed an application for all United Artists pictures for the 1937–38 season (R. 1517). Before the Temple theatre was opened, Fine was notified by telegram from United Artists that he could only have a split of its product for use in that theatre (R. 1517–18).

In September of 1937 (R. 1412) Mooney was advised by Warner's New York office that its product had been sold to Schine for use in the Princess theatre (R. 1410; Ex. W–4 (37), R. 4492). In talking with Essick in November, he told him it was impossible to negotiate a deal on this product for the Temple, and when reminded of Kalmenson's promise, advised Essick to

take the matter up with New York (R. 1410, 1453–54; Ex. 635 C 1, R. 5449). Fine and Essick then went to New York and at the Warner office saw Kalmenson, Carl Leserman, assistant general sales manager (R. 1326), R. H. Haines, eastern sales manager (R. 1322) and H. J. Ochs, another Warner employee (R. 1455). Essick said Kalmenson had sold the Warner product for Medina to Schine contrary to his previous promise to Fine and Essick. Kalmenson denied he had made such a promise (R. 1455–56). Leserman promised to go to Gloversville within two weeks, to see Myer Schine or Lynch, and attempt to secure a split of the Warner product between the Schine theatre and the Temple (R. 1456). About the first part of January 1938, when the Temple theatre was opened, Essick heard from Leserman again and was given a contract for the First National half of the Warner product (Ex. 635, R. 5449, 1457, 1826).[3]

In the fall of 1937, after notification of the split of United Artists product for Medina between them and Schine, Fine and Essick saw A. W. Smith, Jr., at the United Artists' offices in New York City[4] (R. 1518–19). Fine said he had

[3] Originally marked Ex. 635–C–1 contract dated Jan. 27, 1938, approved by G. L. Sears for Warner. All of the Warner-First National Product had previously been sold to defendants under a contract dated Oct. 27, 1937 (R. 3918–19, Ex. D 173, R. 5190–B) following the making of a deal sheet for all this product for use in Schine's Medina theatre dated Sept. 27, 1937, signed by Kalmenson and Lynch [Ex. W–4 (37), R. 4492].

[4] At that time Smith held the position of general sales manager of United Artists Corporation (R. 1246, 2782–83).

bought all this product for use in the Temple theatre; Smith replied someone in the office had sold a split of the product to Schine; all he could give them was just one-half; he would see what he could do about getting the rest (R. 1518–19). When Fine was in New York a short time later he telephoned Smith and was advised that he would have to be satisfied with half of this product (R. 1519).

Fine and Essick invested $53,253.66 in the construction of the Temple theatre (R. 1465–6, Ex. 648, R. 4143). When it opened in January 1938, it was short of product, as it had only Columbia, one-half of Warner, and one-half of United Artists. At the same time defendants' 300-seat Princess theatre was playing all of Metro, Paramount, Fox, RKO, Republic, and one-half of Warner and United Artists product (R. 1458). [The Universal product was still open but had been withheld by its district manager, Dave Miller (R. 1278) for more than six months for possible use by defendants.[*] (Ex. 384, 385, R. 3895–96). Fine and Essick had persistently endeavored to purchase this product in March and December 1937, and January 1938 (Ex. 385, R. 3896, 386, R. 3897, 388, R. 3899).[*] Lynch finally

[*] Letter Jan. 4, 1938, Miller to George Lynch, with copy to F. J. A. McCarthy, eastern division manager of Universal (R. 1278); and inter-office report of Miller to McCarthy dated Jan. 21, 1938.

[*] Ex. 386, R. 3897, is a letter from McCarthy to Lynch dated Jan. 27, 1938, stating the facts above set forth and intimating that in the future Lynch's requests to "hold" product would not be honored unless he at the same time closed a deal for it.

gave Miller what the latter termed "permission" to sell Universal product to Fine and Essick "ten months after he had asked us to hold the product" (Ex. 385, *ad*).]

For the 1938–9 season Fine and Essick were unable to negotiate for any additional product from Warner or United Artists (R. 1457–58; 1521–22). The Temple about balanced its profits and losses during the first three months of operation; then lost money thereafter (R. 1458–59, 1492). In the summer of 1938, in an effort to obtain more product, Fine and Essick saw W. P. Rodgers, then General Sales Manager of Loew's, Inc. (R. 1284) at New York; who referred them to T. J. Connors, Division sales manager (R. 1286). Connors refused to negotiate with them for Metro product (R. 1459).

In June or July of 1938 Essick had also requested Connors to sell him Metro product second-run, and at the same time discussed a split of the first-run pictures, which Connors said was impossible (R. 1470–1471).[7] At that time Connors suggested that a pooling arrangement be worked out between Fine and Essick and Schine (R. 1471). Connors later suggested that he use his offices to bring Fine and Essick together with

[7] Rodgers on July 29, 1938, caused this situation to be investigated by Connors (Ex. 510, R. 3928, 2883). On August 2, 1938, Rodgers received a report from his assistant E. W. Aaron (R. 1284–85) stating Schine had been sold the Metro product through 1938–39 and 1939–40 (under the franchise, Ex. 618, R. 3952), but that Essick said his house was the best in Medina "and one where some of our product should be playing" (Ex. 509, R. 3927, 2882). There was no suggestion from Aaron that was not the case.

Schine in a deal (R. 1460). On December 7, 1938, Connors wrote them that he had seen Myer Schine and discussed the difficulty in the Medina situation (Ex. 511, R. 3929). He then arranged an appointment for them to see Schine at Albany. They proceeded to Albany and worked out a deal with Schine there (R. 1462, 3). On December 22, 1938, Essick wrote Connors that most of the details of the deal had been completed and expressed appreciation of the cooperation of Connors (Ex. 515, R. 1463)* in enabling them to salvage their investment, although he was disappointed in the terms on which they were to get it back.

The final agreement, dated February 28, 1939 (Ex. 648, R. 4143), provides for the organization of a corporation to operate both theatres, with Schine getting 25 percent of the stock for itself, 25 percent for the owners of the Princess (Int. Ans. 17–A, R. 235) and 50 percent to Essick and Fine. Schine was to be employed to manage the theatres and buy the films, for which it is paid $40 per week, plus one-half of the first $3,000 profits. After payment of all expenses, including the $40 per week management charge, Fine and Essick were to receive one-half of the first $3,000 profits, plus the next $1,500 of profits (computed on an annual basis) to be applied on the $53,253.66 investment, and to continue only until

* Saul Silverman, district manager for Schine, told George Angelas and C. H. Henkel (R. 925–26) in January 1939 that the individual operator in Medina who refused to cooperate with Schine went broke in a year's time and begged Schine to take the theatre over (R. 926).

such cost to them is liquidated. Schine, with no investment, was thus assured of income from the operation before Essick and Fine got any return of their invested capital, which they may recoup in about thirty-five years. After payment of the above sums, any remaining profits are to be equally divided.

The Princess, after the pool was completed, was only kept open for intermittent periods of time, and was permanently closed in 1941 (R. 1468–69).

MIDDLESBORO, KENTUCKY

(Pop. 1940, 11,777—R. 2574)

In January of 1939 Schine acquired both of the theatres in the town, the Manring, 965 seats, and the Brownie, 418 seats (Int. Ans. 17, R. 239). At the same time Schine took from the vendor and his family a covenant not to compete in Middlesboro for 15 years (Ex. S–75, R. 5142).

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Mt. Vernon, Ohio

(Pop. 1940, 10,122—R. 2574)

In 1934, there were three theatres in Mt. Vernon, the Memorial, owned by Knox County, with 1100 seats, the Vine, 600 seats, and the Lyric, 250 seats. The Memorial and Vine were acquired by Schine from an operator named Smoots (R. 2671) about one month before the Lyric was acquired from another operator named Platt, in February 1934 (R. 2672). Platt, as part of the terms of the sale of the Lyric, was made local manager (R. 2672). The Memorial lease expired September 30, 1934, and was not renewed (Int. Ans. 17–A, R. 236). Emerson Long took over the Memorial on a five-year lease in December 1934, and the Lyric which had been closed was opened by Schine a few days after Long reopened the Memorial (R. 512–14, 537).

Both before and after the Memorial was reopened Long tried to license first-run product for the 1934–35 season and called at all the exchanges except Universal (R. 516–21). He finally succeeded in obtaining a deal from Columbia in February 1935 (R. 515) after it was held up nearly two months (R. 523–24) [while Columbia unsuccessfully tried to make a circuit deal with Schine (Ex. P. 11, R. 3769).]

Long also got a first-run deal from United Artists for 1934–35 (R. 525), but when he tried to license United Artists' product first-run for 1935–36 out of the Cleveland branch, he was

told that the product had already been sold through New York (R. 525). The play-off records (Ex. 718–E, R. 4304–05) show that for this season Schine selected seven pictures and paid $331.41 for four of them.[1] Seven rejected pictures were later made available to the Memorial, for which it paid $860.00,[2] and it had paid $1,677.50 for the sixteen pictures in its 1934–35 deal (Ex. 718–E, R. 4304–05).

In July 1935, Long made a trip to New York and called upon general sales executives of Fox, Paramount, and RKO in an effort to license first-run product. He was unable even to negotiate for any first-run product with them although he had the largest theatre in the town (R. 512, 525–26).

Long used second-run of Metro product for the 1935–36 and 1936–37 seasons (R. 534, Ex. 951, R. 5629), but Schine licensed the second-run for 1937–38 by adding to the Loew franchise a separate deal sheet dated August 7, 1937, which provides for second-run at the Lyric on pictures

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[1] Three additional pictures were played under a blanket contract and film rental is not shown.

[2] The United Artists' inter-office correspondence (Exs. P. 12, 321, 322, 323, R. 3769, 3847, 3848, 3849) relating to Mt. Vernon and Van Wert show that the Cleveland branch sought to obtain the consent of Schine before selling the independent exhibitors in these towns the English pictures first run which Schine had not bought, although Long was "in desperate need of first-run product" (Ex. P. 12, R. 3769) and was willing to pay prices "way ahead of the prices we had on Schine" (Ex. 323, R. 3849).] The Vine and Lyric were then running double features and continued to do so until the Lyric was demolished in 1937 (R. 612–13).

playing the Vine first-run (Ex. 618, R. 3952). Long complained to the Department of Justice, and Loew's home office counsel (Ex. P. 13, R. 3771, 625) wrote Drew, Cleveland branch manager, on April 7, 1938, requesting the reason for changing the second-run account for the 1937–38 season.[3] Long then got half of that season's product on a second-run contract bearing an application date May 16, 1938 (Ex. 949, R. 5627), and also got half of the 1938–39 product on the same run (R. 548, Ex. 950, R. 5628).

Long attempted over a period of several years to buy a second-run from Paramount, Fox, and RKO, but they refused even to negotiate (R. 552–63). The Lyric was demolished in October 1937 (R. 537) and Long made his first second-run deal with Warner about September 1937 (Def. Ex. D 10, R. 5152). From October 1937 to April 1938 when Schine's new Vernon was opened (R. 538), Schine had only the Vine in which to play its first-run product and the second-run that Metro sold away from Long.

About a year before Schine started to build the Vernon, May called on Long and wanted to know if a deal could not be worked out for the Memorial saying that if they could not get together Schine was going to build a new theatre. He showed Long the plans but Long was not interested at that time (R. 539–43), Schine then proceeded to build the Vernon and opened it at admission prices of 35 cents downstairs and 25 cents in the

[3] Drew wrote Long on April 12, 1938, falsely stating that he was holding up disposing of this run in Mt. Vernon until he heard from Long (Df. Ex. D 6, R. 5148).

balcony (R. 568–69). The Vine had charged 35 cents before the Vernon was opened, but afterwards cut to 30 cents, then to 20 cents on week ends and 15 cents in the middle of the week, and still later to 15 cents throughout the week (R. 538–39). Admission prices at the Vine were raised back to 20 cents, when Long finally gave up the operation of the Memorial in 1940 (R. 539).

Long's lease on the Memorial terminated in December 1939, and in July of that year Schine offered the county a lease on it at a higher rental, with the stipulation that the Memorial be closed as a theatre and used only for public meetings (R. 633, 637, 639). As the county preferred to keep it operating as a theatre, they extended Long's lease for another year (R. 639). This lease terminated on December 31, 1940, but because of inability to get attractive product Long ceased operation on December 10, 1940 (R. 569). Schine had then re-leased the Memorial from the county for a term of five years to commence at the end of Long's lease (R. 642–44). The county, however, was only willing to make a lease with Schine on the condition that the Memorial would be operated as a theatre for at least one performance daily showing the best product on second run at an admission price not to exceed 25 cents (R. 643).

Newark, New York

(Pop. 1940, 9,646—R. 2573)

In Newark Schine acquired one theatre in October 1924 and the other theatre in April 1926. Between 1929–1933 these theatres were under Fox operation but were then returned to Schine. Schine has kept one of the theatres closed (Int. Ans. 17, 18, R. 227), although renewing its lease from time to time at a commitment of $35,200 (Ex. 921, R. 5239, Ex. 922, R. 5240, Ex. 83, R. 5193).

The trial court in its findings refers to letters between Schine and United Artists respecting this town which tend to show the conspiracy between them (F. 25, R. 3224).

Norwalk, Ohio

(Pop. 1940, 8,211—R. 2574)

In 1934 the Forum theatre, seating 537, was constructed in Norwalk by Jerome Steele and William Selman (R. 983; Int. Ans. 17–A, 18, and 23, R. 236). In operation at that time was the Moose theatre, seating 838, owned by the Moose Lodge for which Joseph H. Felter was the buyer and booker (R. 982–83, Int. Ans. 17–A, 18, and 23, R. 236). In the summer of 1935, John A. May and Louis Lazar approached Felter and Mr. Frederick, manager of the Moose, relative to defendants' leasing the Moose (R. 983–84). Lazar returned with the same request on periodic visits for a year or so (R. 939, 940) and was informed each time that the Lodge did not care to lease the theatre (R. 985).

Defendants acquired the Forum in July 1935 (Ex. P. 97, R. 3793; Int. Ans. 17–A, 18, and 23, R. 236) under a deal whereby Selman retained a stock interest and went to work for Schine which bought the films for a percentage of the gross (Ex. P. 97, R. 3793). Just before this purchase Lazar advised Felter to "get in with us," stating "we are a big company. You know what it means if you are not in with us," and that the owners of the Forum would quit if the Moose theatre were leased to defendants (R. 986–87).

The Moose had the RKO product first run in 1934–35 (R. 987) (Ex. 953, R. 5631). It also had

Warner, Universal and United Artists and half of Fox (R. 1005, 1006, 1027). The Forum had Columbia, Paramount, Metro and the other half of Fox (R. 1027–28). Felter went to see Greenblatt, Cleveland exchange manager of RKO (R. 1298), about product for the 1935–36 season on several occasions during May, June and July 1935 and about the first of June Greenblatt took an application and sent it to New York (R. 989–990). About two weeks later Greenblatt told him he did not believe the RKO contract was going to be returned to his office (R. 990). He told Felter several days later that he had telegraphed his home office, that if Felter insisted any more he (Greenblatt) would lose his job, and that Felter could not have the RKO product for the reason it had been sold to defendants (R. 988–990).

In the spring of 1935 Steele saw Greenblatt numerous times about a 1935–36 deal for the Forum and was told that the Moose Theatre had been their customer for the past twelve years and that RKO was going to stick with the Moose (R. 719). That season Felter obtained some independent productions, retained his half of the Columbia and Fox product (Ex. 954, R. 5632, F–101 (36), R. 6040), lost half of the Warner product (Ex. 635–A, B; R. 5444, 5445), picked up Columbia (R. 990),[1] and lost almost all of United Artists[2] (R. 990, Ex. 718–F, R. 4306).

[1] [Columbia was out of the Schine circuit for this season (Ex. P. 11, R. 3769).]

[2] Felter testified that he had one-half of the United Artists for that season (R. 990), but the play-off record of that company shows him to have been mistaken as he actually played

When Felter saw Mooney, Warner exchange manager at Cleveland (R. 1349, 1323), relative to buying all the Warner product for the 1935–36 and 1936–37 seasons after Schine acquired the Forum he was told that he did not have a chance (R. 991–93) as "the Schine's have got the house and they are going to use it" (R. 994).

Felter was unable to obtain any first-run product for the Moose for the 1936–37 season.[4] When

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only two United Artists pictures while Schine played 11 (Ex. 718–F; R. 4306). The film rental received by United Artists at Norwalk, Ohio, for twenty-two features played at the Moose Theatre in the 1934–35 season had been $1,632.53 (Ex. 718–F, *Id.*, Ex. 719, p. 15, R. 4316); in 1935–36, six of the fifteen features released were bought by Schine for $269.54; the Moose paid $132.20 for two, and three more were sold to Schine under blanket contract, making it impossible to exactly compute the rental paid by Schine for these pictures for this town (Cf. Ex. 719, p. 15, and B. C. schedule R. 4314 *et seq.*); but the fact that Schine paid only forty-five dollars per picture for the six on which Norwalk rentals are shown against the seventy-five dollar average rental paid by the Moose indicates that United Artists got much less in the 1935–36 season than it had received from the Moose in 1934–35 (Cf. Ex. 719, p. 15, and B. C. schedules, *Id.*).

[4] By master agreements, franchises, and circuit deals, defendants had the following major product under contract for the Forum theatre in the 1936–37 season: *Metro*, Forum or Moose theatre first run, by agreement dated *October 1, 1936*, prior to acquisition of the Moose in December 1936 (Int. Ans. 17–A, 18 and 23, R. 236), (Clearance schedule, p. 3, Ex. 618, R. 3952, 2524). *Warner*, Forum theatre, first run 1936–37 (Ex. W–6 (37), R. 5771); R. 1165; Forum or Moose theatre first run, 1936–37, 1937–38, 1938–39 (W–4 (38), R. 4493, 1166). *RKO* (theatre not named), 1936–37, (Ex. R–2 (40), R. 4854, 1186), *Fox*, 1935–36, equal split with Moose (Ex. F. 101 (36), R. 6040, 2545), 1936–37, for Forum alone (Ex. F–47, R. 5953, 2577).

he first saw Goodman, exchange manager of United Artists at Cleveland (R. 1243) about getting 1936–37 product of that distributor, Goodman first stalled him; a few weeks later told him he had a "kind of a deal on with Mr. Schine," and later told him the product was not available (R. 995). He also talked with Schmertz, Cleveland exchange manager of Fox (R. 1216), with whom he had dealt for a period of years (R. 995) who said "I never turn down my customers. You can have half of my product," made him a price for it, and gave him a contract to be signed in 15 days (R. 996–97). Three days after the time expired he telephoned Schmertz and was told the pictures had been sold to Schine (R. 997). He then bought a second-run of Warner features (R. 997). In July 1936, Bissell, the Columbia manager not only refused to negotiate for a continuance of his first run but told him "you had better hurry if you want second run"[1] (R. 994).

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[1] The Moose under its 1935–36 (Ex. 954, R. 5632, 2533–34) contract had paid more for the Columbia product than Schine did under its 1936–37 deal (Ex. 953, R. 5631). The play-off records for Moose exhibitions of its product in 1935–36 show a return of $1,234 to Columbia (Ex. 685–D, R. 4191); the return in 1936–37 for features was only $745 (Ex. 685–E, R. 4192). The Columbia contract with the Moose theatre in the 1935–36 season was for 40 features, with no first-run clearance specified over second-run, minimum evening admission prices specified, and in the case of 6 of the best pictures required a guarantee of $75 each against 30% of the gross receipts, and for 6 more, $50 each against 25% of the gross receipts (Ex. 954, R. 5632). By contrast, the Columbia contract for Schine's Forum for the 1936–37 season contained no minimum admission price requirements, allowed Schine to

He then contacted Frank Drew, Metro exchange manager at Cleveland, Ohio (R. 1287), who told Felter he would pick out a group of second-run pictures for him, and furnished a contract which Felter signed and sent in (R. 997). Felter saw Drew about two weeks later, and was told that it did not appear that Metro would sell any second-run pictures in Norwalk (R. 998), saying his company did not want to establish a second-run policy there (R. 998). Felter then got in touch with Lazar and told him the Lodge had decided to sell the Moose to Schine (R. 998). They acquired it for $15,000* (R. 999), plus commission payments to Felter and another employee of $1,250 each (R. 1011, 1026). Between the time the deal was made for this acquisition, in October 1936, and assumption of control of the theatre by defendants in December, Felter worked for them as its manager; then resigned (R. 999–1000). Thereafter the theatre was operated on a part-time basis (R. 999–1000, Int. Ans. 17–A, 18 and 23, R. 236). Its evening adult admission prices were increased from a former price of 15 cents to 20 cents (R. 1000). The evening adult admission price of the Forum theatre was at the same time increased from 30 to 35 cents (R. 1000).

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eliminate 18 out of the 40 pictures for which the contract was made, single or double-feature those played, required only a flat rental of $75 for each of 4 top pictures and a flat rental of $50 each for the next six best features, and additionally gave the Forum 90 days' clearance over second run—the Moose (R. 997, Ex. 953, R. 5631).

*The capital investment of the Lodge in this theatre was $60,000 (R. 1027).

On January 27, 1939, George K. Angelas, of Mansfield, Ohio, delivered an option to purchase a lot on East Main and Prospect Streets in Norwalk to Schine and agreed to lease to Schine any theatre built on it (Ex. P–60, R. 3784). He had bought this property in the year 1938 for $19,000 (R. 924) and intended to build a restaurant and theatre there (R. 925). The option resulted from a call made upon him by Saul (Bud) Silverman, district manager for Schine,[7] who inquired whether Angelas intended to personally operate the prospective theatre or lease it (R. 925). Silverman suggested that if Angelas would not close a deal for the operation of the theatre with Schine he would be broke within a year after he started (R. 925). When Angelas asked why, Silverman replied that the defendants controlled the first and second class pictures in Norwalk and had them tied up for two years in advance.[8] Angelas said he was not the type to be scared out of a deal but suggested they see his attorney, C. H. Henkel, of Mansfield (R. 925). A second meeting of Silverman, Henkel, and Angelas followed, at which Silverman offered a lease to Schine for 20 years, based on a rental of 10 percent of the gross (R. 925–26). He also referred to the fact that in Medina, Ohio, an individual operator who refused to cooperate with Schine Circuit, Inc., went broke in a year's time and begged Schine to take over the theatre (R. 926).

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[7] Affidavit filed by Saul Silverman on September 27, 1939, in opposition to preliminary injunction.

[8] See franchise references in note 4.

The negotiations at first broke off because Schine refused to give the security required for the type of building supposed to be built there (R. 937). Silverman then called in Louis Lazar, Schine division manager (R. 736–37, 926) and the option to sell or lease to Schine was finally negotiated with both of them (Ex. P–60, R. 3784). However, it was never exercised, as Schine acquired two lots east of Angelas' property (Int. Ans. 31, R. 254) and on it constructed their own new theatre, the Norwalk, in 1941 (Int. Ans. 17–A, 18, and 23, R. 236).

Since completion of the Norwalk, the appellants have kept the Forum closed (Int. Ans. 17–A, 18 Supp. Sched. to 18, and 23, R. 245).[9] On November 6, 1941, the owner of the Forum made an agreement with Schine that their lease could be cancelled; that the premises

> "shall not be used as a motion-picture theatre, or as a theatre of any kind, before the first day of February 1955,"

and agreed "to restrict said premises against such use" in lease they then proposed to make with J. C. Penny Company [Ex. 1008, R. 5277].

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[9] In 1940 the evening admission price charged at the Forum was 44 cents (R. 1000, 1001). In the same year the top admission price for first-run pictures in Van Wert, a competitive situation of comparable size, was 25 cents (R. 703).

Norwich, N. Y.

(Pop. 1940, 8,694—R. 2573).

William Smalley has been in the theatre business about 30 years and now operates full-time theatres in 12 small New York towns, and two theatres in two other towns that are operated in the summer only (R. 2409–10). All of these towns except Johnstown and Norwich are one-theatre towns of less than 4,000 population (R. 2443). Smalley took over the Strand Theatre at Norwich, November 4, 1930. At that time Fox Metropolitan was operating the Colonia, 1,045 seats, the only other theatre in town, and continued to operate it until 1933 when it was re-acquired by Schine (R. 2410, Int. Ans. 17–A, 18, R. 229). The Strand was destroyed by fire in March 1932 and was rebuilt and re-opened November 1932 as the Smalley Theatre (R. 2410); it was of Spanish type, modern and had 850 seats (R. 2442–43).

For the 1930–31 season Smalley used on first run the product of RKO, Pathe, 1st-National, United Artists, and Columbia; for the 1931–32 season, he had all of 1st-National, Warner, and Columbia; for the 1932–33 season, he had an equal split of RKO, Warner, 1st-National, Columbia, and United Artists (R. 2410).

Starting about June 1933 and continuing to November 1933, Smalley tried to negotiate for a

continuance of his Warner split for the 1933–34 season, but was finally advised that Warner could not sell him any pictures in Norwich all of the product for that season had been bought by Schine (R. 2410–12, Ex. 886, R. 4381). For the 1934–35 season, Smalley again tried to license 50 percent of the Warner product beginning in May 1934, but was advised then, and subsequently, that the pictures for Norwich, had been sold, and that Warner had a satisfactory customer and would not be in a position to deal with Smalley (Exs. 887, 888, R. 4382–83). Smalley was unable to obtain a deal with Warner for the 1935–36 season and from then on to 1941–42, except for an occasional rejected picture (R. 2423–24). After Warner began selling in blocks of five in the fall of 1941, its representatives would discuss terms with Smalley on blocks for his other theatres, but not for Norwich (R. 2424).

With respect to the United Artists' product for 1933–34, Smalley received a letter of June 27, 1933, from Streimer, New York branch manager, advising him that Streimer had been instructed to work out a split of product for Smalley (Ex. 889, R. 4384). Smalley saw Streimer next in August, at which time he was told that Schine had made a complaint that he, Smalley, had been cutting admission prices in some of his towns and that before they could discuss the split further United Artists would have to see what it was all about. Smalley gave him the correct data on his admission prices which showed that Schine's complaint was untrue, and Streimer said he would try again (R. 2426). Smalley continued to carry on negotiations from August

to November (R. 2426, Ex. 892, R. 2427, 4386, Ex. 893, R. 2428, 4387, Ex. 894, R. 2429, 4387). On November 4 he received a letter from Streimer in which Streimer quoted Myer Schine to the effect that Schine was not "in a position to give up a split of your product in Norwich" (Ex. 892, R. 2427), but on November 11 Streimer advised Smalley that he was going to Gloversville "to try to force an issue direct with the Schines for a split" (Ex. 894, R. 2429, 4387). In December Streimer advised Smalley that he could not get any pictures for him (R. 2429).

For the 1934–35 season Smalley began negotiating in May for a split of United Artists' product; and in August he was advised that United Artists had an obligation to Schine for all of their pictures "as he bought them last year," and "because they are good customers of ours and they usually buy our pictures for all their theatres" (Ex. 891, R. 4385, 2429). When Schine and United Artists, however, did not make a deal for 1934–35, the product was offered to and bought by Smalley on November 12, 1934 (R. 2430–31, Ex. 895, R. 2429). Smalley carried on negotiations for the United Artists' product for 1935–36, starting at the beginning of the buying season. Streimer said he was going to try to get the product for him because he had it the previous year, and that there was certainly no reason why he should not at least get a split (R. 2430–31). But about the middle of December 1935, Streimer advised Smalley that the deal had been taken out of his hands by someone higher up who sold the product as a circuit deal (R.

2431–32).[1] Smalley continued his efforts to get United Artists' product from 1936–37 to 1942 without success (R. 2432).

Smalley had a first-run deal with Columbia for 1933–34 (R. 2434), and paid approximately $1,750.00 for 38 pictures and 12 westerns (Ex. 685 F, R. 4193). Although Smalley did not mention the 1934–35 season in his testimony, the Columbia play-off records show that Schine licensed the product first-run that year, paying about $1,170.00 for a selection of 27 pictures—19 features and 8 westerns, but that Smalley played 21 features, which consisted of rejections and second runs, paying $480.00 (Exs. 685 G, H, R. 4194–95). Thus the combined total for Schine's first-run deal and Smalley's deal for rejections and second-runs for 1934–35 did not return as much film rental to Columbia as Smalley paid in 1933–34. Smalley got a split of Columbia for the 1935–36 season, but lost it in 1936–37 (R. 2436).[2] Thereafter only rejected pictures were available to Smalley (R. 2435, Ex. 900, R. 4391).[3]

[1] The United Artists play-off records show that Smalley paid $2,044.56 for 21 pictures in the 1934–35 season, but that Schine paid $420.61 in the 1935–36 season for five of eight pictures played (the remaining three being paid for under a blanket contract and the amount is not shown). Smalley, however, played six rejected pictures from the 1935–36 product and paid $451.55 for them (Ex. 718 I, R. 4313).

[2] The Colonia contract for 1936–37 (Ex. 955, R. 5633) calls for 12 selected features and the Smalley contract for this season (Def. Ex. D–142, R. 6210) specifies "pictures rejected by the Colonia."

[3] On the cross-examination of Smalley an effort was made, through the introduction of two self-serving letters written to Smalley by Columbia's legal department on *June 3, 1940*, and *November 13, 1939*, to make it appear that Smalley had

Smalley had a split of RKO in 1933–34 (R. 2434–36). For the 1934–35 season he was advised that Schine had a selective deal, and that he could have whatever pictures were rejected. From that time on the only RKO pictures he could get were rejections (R. 2436).[4]

Smalley tried to get Metro product for 1933–34. He was advised that they had a good customer in Norwich, and no deal was offered to him through 1940–41; but the only pictures he could get were rejections (R. 2436–37). After the method of selling in blocks were in, he tried to buy a picture once in a while out of one of the blocks, but the Metro representative merely said "You know the situation. We have been over that for years" (R. 2436–37).

Smalley likewise tried to negotiate a first-run deal with Fox for the 1933–34 season, but was told that Fox had a satisfied customer and that no pictures were for sale. The only Fox pictures he could get were rejections. Starting in the fall of 1941 he tried to license a block of pictures but was told they were sold to Schine (R. 2437–41).

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been offered a fair split of the Columbia product and was still being offered the opportunity to license such a split, but that Smalley had been unwilling *to pay a fair price* (Def. Exs. D–143, D–144, R. 5177, 5178). The legal department was apparently unaware that the sales department had already acknowledged to Smalley that the Schine franchise (Ex. C–102 (37), R. 5012) made in October 1938 for the 1938–39 and 1939–40 seasons, prevented consideration of Smalley's offer to buy a split at "the same price flat or percentage that you are receiving" (Exs. 901, 902, R. 4391–92).

[4] Def. Ex. D–140, R. 6208 is the Smalley contract for the rejected RKO pictures for the 1937–38 season.

Although Smalley did not have a split of Universal product in 1932–33, he tried to license a split for the 1933–34 season; he was advised, however, that Universal had a franchise agreement with Schine which had been in effect since August 1, 1931, and that this franchise covered "all towns they are now operating, or any additional theatre they might acquire during the life of our agreement" (Exs. 896, 897, R. 4388, 4389, 2433).[5]

In May of 1934 Smalley met Myer Schine in Johnstown, and in the course of their conversation Schine asked him if he would sell his theatre in Norwich; Smalley retorted by asking Schine to sell his theatre. Myer Schine said he wasn't selling—"I am buying theatres" (R. 2447). In September 1940 Willard McKay made a proposition to Smalley for the purchase of his circuit by Schine but Smalley wasn't interested (R. 2447–48).

[5] Thus when the Colonia Theatre came back into Schine's hands in 1933 the Universal product was automatically available to him, regardless of any price that Smalley might offer.

Ogdensburg, New York

(Pop. 1940, 16,346—R. 2573)

Lawrence J. Carkey managed the Strand theatre in Ogdensburg for the defendants from September 1926 to March 1927 (R. 2389), and was a division manager for them from 1926 to 1928 (R. 2389). The only other theatre in this town is the Pontiac (formerly named the Star) (Int. Ans. 17–A, 18, and 23, R. 229). Both of these theatres have been leased by the defendants since 1926 from the same landlord. Since its acquisition by defendants the Pontiac has been operated only part time since 1926, except for a period in 1930 when the Strand was being remodeled. It was closed altogether from 1931 to 1938 (Int. Ans. 17–A, 18, and 23, R. 229; and Supp. Sched. to 18, 23, R. 244).

In July 1940, Carkey, who was then operating a theatre at Utica, went to Ogdensburg and noticed that the Pontiac was closed except for weekend operation (R. 2389–90). He then talked to the Mayor and City Clerk relative to leasing unoccupied space in the City Market Building for the purpose or remodeling it into a theatre (R. 2390–91). His bid for a five-year lease, with a five-year option, on this property was accepted by the City Council (Ex. 879, R. 4378), and plans for the proposed theatre were prepared (R. 2393). On September 30, 1940, the Corporation Counsel of Ogdensburg sent him a lease acceptable to that

city (Ex. 882, 883, R. 4380, 5225). Carkey did not sign the lease, however, nor could he go ahead with his Ogdensburg theatre project for the reason that, while he had been assured of film product before contacting the City officials (R. 2398), when he was ready to sign contracts for product late in August, he was advised that it had been sold to defendants (R. 2399–2400).

He had contacted Gene Vogel, Metro salesman (R. 2396); George Tucker, an RKO salesman; J. Spandau, Albany branch manager of Universal (R. 1279); Richard Struewe, a Warner salesman (R. 2837); Jacob Arms, a Columbia salesman (R. 2841); Fred Sliter, a Fox salesman; and a salesman for United Artists 2394–95) between July 1 and July 15, 1940. He also contacted Richard Haas, of Paramount (R. 2396), requesting second-run product for the proposed theatre, and was assured he could have it from each company (R. 2396–97). Each of these was contacted later, when the deal for the lease was completed, and each advised, except Spandau of Universal, that the product had been sold to Schine in Ogdensburg (R. 2400–01). Spandau told Carkey he was ready to sell him at that time but Carkey could make no deal because he had no assurance of other major product (R. 2400).

On September 26, 1940, the Ogdesburg Journal, a daily newspaper published an article entitled "Schine Pontiac to open on Seven Day Basis" (R. 2404). It contained information supplied by Jacob Weber, Manager of Schine's Strand theatre (R. 2405). In this article it was reported that "with the curtailment of outdoor activities, opening the Pontiac will give the theatre patrons

a choice of pictures at any time," and "the operating policy will be the most liberal ever offered in this part of the country * * * all programs will be double-featured," and "the admission price will also be reduced" (Ex. 884, R. 2406). On November 2, 1940, an advertisement announced that the Pontiac would again operate only on Saturdays and Sundays (R. 2407) and the Pontiac ads ceased entirely on December 19, 1940 (R. 2406-07, Ex. 885.) Although the theatre was apparently still closed the lease[1] was renewed on September 6th, 1941, for five years (Ex. 915, R. 5232).

[1] This lease was also made for five years in 1936 (Ex. 916, R. 5234), when the theatre was also closed (Int. Ans. 17-A, R. 229).

Oneonta, N. Y.

(Pop. 1940, 11,731—R. 2573)

In Oneonta, Schine acquired the Strand in October 1919, the Oneonta, 1217 seats in November 1922, and the Palace 866 seats in March 1923. These are all the theatres in Oneonta. During 1927–33, the Oneonta and Palace were under Fox operation but in 1933 were returned to Schine. According to Schine's answers to interrogatories (Int. Ans. 17, 18, R. 229) filed in 1941 the Strand has been kept closed by Schine and opened occasionally or part time. According to its objections to plaintiff's proposed plan of reorganization, filed in 1946, the Strand, between 1929–33 was sold and converted by the purchaser to commercial use (R. 3278).

The record shows that both the Palace and Oneonta received an identical clearance over 5 or 6 towns from the distributors despite the fact that some of the distributors acknowledged the difference in revenue possibilities of the two theatres by permitting film rental or admission price differentials (Exs. W. 3, R. 4429, W. 34 (20), R. 4584). Clearances given Schine's theatres in Oneonta over other towns have been considered unreasonable in arbitration proceedings under the Paramount consent decree. Appeal Board Decision No. 53; Arbitration Case No. 15–4F–42. [As to the distributors' relations with Schine respecting clearance in Oneonta see Exs. P–228, R. 5888; P–229, R. 5889; 958, R. 4393; 312, R. 3844.]

Paris, Kentucky

(Pop. 1940, 6,697—R. 2574)

Harry Schwartz, the operator of the Opera House at Lexington, in the early summer of 1937 drove through Paris (R. 2025, 2038). He noticed Schine's Bourbon Theatre there (R. 2038), and a sign on a building stating that Schine was going to build a new theatre in Paris (R. 2039). In the summer of 1938 he returned to Paris and noticed that the sign he had previously seen was in a broken-down condition and the reading matter practically obliterated (R. 2039). On November 2, 1938, he entered into a lease of certain property in Paris with the intent of erecting a theatre on the premises leased (Ex. 828, R. 2051, 4362).

After making the lease, he wrote all the film companies (R. 2040). Fox replied that its product would not be available to him in Paris because Schine was their old customer there (Ex. 824, R. 2040, 4360). RKO replied that their first run was under contract in Paris, but by the time Schwartz began to operate they might have some service for him (Ex. 825, R. 2040, 4360). Universal replied that it had its product sold in Paris but there was a possibility of serving him with pictures which had not played in Paris during the past year (Ex. 826, R. 2041, 4361). After receiving Fox's reply, Schwartz tried to get second run from Fox, calling on Grady, branch manager of Fox, for that purpose (R. 2041). Grady was unwilling to negotiate with Schwartz for second run

because of the possibility that Schine would build another theatre in Paris and desire second run (R. 2041–42). [On November 8, 1938, George Lynch, on behalf of the defendants, wrote to Fox asking Fox to hold its second-run product for them at Paris because they were arranging to build a new theatre there (Ex. 216, R. 3813). Fox acquiesced in this request (Ex. 218, R. 3813).] Jacques, branch manager of RKO, also refused to negotiate with Schwartz for second run for the same reason (R. 2042). This was likewise true of Krieger of Universal (R. 2042). Warner Brothers apparently was willing to give Schwartz a second-run contract for Paris, but when Schwartz could not obtain product from the other film companies he did not take the Warner second run (R. 2042–43).[1]

Schwartz started the construction of his theatre in Paris around July 1939, after leasing additional property necessary for this purpose in June 1939 (R. 2044, 2057–58) (Ex. 828, R. 4362). Schine then started construction of a third theatre there (R. 2044). Both before and after Schwartz started his construction Schine made several attempts to buy him out at Paris (R. 2044–48). Louis Lazar told Price Coomer, a former associate of Schwartz, that if Schwartz went ahead with his theatre in Paris, Schine would build a 1,200-seat theatre in Lexington and run it on a ten-cent policy (R. 858). Schine finally

[1] That Schine overbought at Paris to prevent Schwartz from getting sufficient second-run product appears from the fact that after they had bought out Schwartz they cancelled the second-run contract they had made with Paramount for Paris (Ex. 273, R. 3826).

bought out Schwartz's interest in his Paris property on September 15, 1939 (Ex. 828, R. 2051, 4362), while his theatre was still under construction. Although the defendants assumed the obligation of the long-term leases taken by Schwartz on the property and paid Schwartz $5,000[3] (Ex. 828, R. 4362), they did not complete his theatre (Int. Ans. 31, R. 254). They completed their own new theatre and then closed the Bourbon (Int. Ans. 17–A, 18, 23, R. 239).

[3] This was apparently the consideration for the agreement by Schwartz and his associates not to compete in Paris or any other Kentucky location of the defendants contained in paragraph 3 of this sales agreement, Ex. 828, R. 4362.

Perry, New York

(Pop. 1940, 4468—R. 2573)

In July 1935 the Auditorium was the only theatre in Perry (R. 1850). It was owned by Perry Township (Int. Ans. 17–A, R. 230, 1854). John Herzberger had been operating it continuously and profitably since 1913 under a lease from the township (R. 1850, 1854–56, 1859, Ex. 361, R. 3884). Before July 1935 he had no reason for selling or quitting the theatre (R. 1858).

[On November 28, 1934, Dave Miller, Resident Manager of Universal at Buffalo, wrote a letter (Ex. 361, R. 3884) to J. Myer Schine, pursuant to a previous telephone conversation between them, concerning the theatre situation in Perry. He set forth Herzberger's gross receipts on sixteen Universal pictures played in Perry during the 1932–1933 season, stated that "it is very apparent that the average daily business, in this theatre, is well over $100.00", gave details as to the population and industry of the town, asserted that Herzberger was not a "showman" but that he had "made a lot of money in this town, despite himself".]

In July 1935, Schine bought the Davis property in Perry (Int. Ans. 31, R. 254, 1850–51). May promptly thereafter called on Herzberger at his theatre to tell him that Schine had just closed a deal on a lot in Perry and was going to build a 1000 seat theatre there costing $100,000 (R. 1850).

May also gave this story to Read Clarke, Publisher of the Perry Record (R. 2276–79, 2285). On the information which May furnished him, Clarke wrote news items which were printed in three issues of his paper, on the front page, stating what the plans of the Schines were with reference to building of a theatre, its cost and seating capacity (Exs. 807, 808, 809, R. 5218; 2278–79, 2285). Herzberger regularly read the Perry Record (R. 1851), and saw these stories on the front pages of the paper (R. 1852–53, 1855). Thereafter, Harry Seed, manager of the Warner Exchange at Buffalo, asked Herzberger to meet J. Myer Schine in Rochester (R. 1853). A meeting was accordingly held there sometime before September 1, 1935, between Herzberger, Schine, May, and Seed, at which Schine offered Herzberger $5,000 for his lease (R. 1854). Herzberger accepted this proposition on condition that the township would consent to his assigning the lease to Schine before September 1 (R. 1854). May thereupon drew an agreement which both Schine and Herzberger signed (R. 1854). Objecting to Schine as a tenant, the township withheld its consent to the assignment and the deal did not materialize (R. 1854–55).

The village of Perry was not large enough to support Herzberger's theatre, which seated 600, and also a 1,000 seat house, such as Schine contemplated (R. 1858–9). Because of this fact and because Dipson offered Herzberger more money than Schine did (R. 1857), Herzberger negotiated with and sold to Dipson in September or October of 1935 (R. 1855). Herzberger continued working in the theatre as Dipson's man-

ager (R. 1856), during which time Dipson spent about $13,000 improving the theatre (R. 1858), but at the end of the year's operation, Dipson sold to Schine (Int. Arts. 17-A, R. 230, 1859). Herzberger then quit the theatre and left Perry (R. 1855–56, 1859). Although Schine had blueprints, which were dated September 1935 (R. 2684) and specifications drawn for a new theatre (R. 2685), no new theatre has yet been built on its Davis property or elsewhere, although Schine still owns the property (R. 1856).

Piqua, Ohio

(Pop. 1940, 16,049—R. 2574)

In Piqua, Schine in May of 1931 acquired all three theatres in the town, the Piqua, with 958 seats, the Miami, 712 seats, the Bijou, 375 seats. The Bijou has been kept closed (Int. Ans. 17, 18, 23, R. 236). Schine has renewed the lease on the Bijou from time to time at a commitment of $13,220 (Exs. 911–914, R. 5227–5232).

Rochester, New York

(Pop. 1940, 324,975—R. 2573)

Chester Fenyvessy has been connected with the motion picture industry in Rochester continuously since 1918, and his father's connection goes back to about 1909 (R. 1662). The family acquired the fee of the Madison Theatre about 1929; the fees of the Liberty and West End, in 1932, and the fee of the Monroe, in 1933 (R. 1662–63). At the time the fee of the Liberty was acquired in 1932, the theatre was under lease to Schine (R. 1663), and Schine continued to hold the lease until February 1939, when the fee of that theatre, along with the fees of the Madison, Monroe, and West End, were sold to Schine (R. 1662, Int. Ans. 17–A, R. 230–31). The Fenyvessys still own the Capitol, a downtown theatre (operated by Comerford and Paramount), and they were lessees of the Strand until about 1938 (R. 1665–66). Schine secured its first theatre in Rochester, the Grand, in 1924, and up to the time of the Fenyvessy deal had acquired by lease, or fee, six additional theatres.[1]

The Fenyvessy's Madison and Monroe and the Schine Riviera, Liberty, Dixie, and State were

[1] The State, Riviera, and Liberty in 1926, the Dixie in 1932, and the Cameo and Lake in 1936. A half interest in the operation of the Webster was acquired in 1927 and relinquished in 1933 (R. 2224, I. A. 17–A, R. 230–31).

neighborhood theatres[2] and charged the same admission—25 cents for adults and 10 cents for children (R. 1672). The Monroe was the only neighborhood theatre in Rochester with an air-conditioning system, and the Madison had a complete stage, which was an unusual feature (R. 1668–70).

For the 1931–32 season, the Madison had a second run in the city of Rochester (R. 1672) of the product of Warner (Exs. 720, 721, R. 5490–91) and RKO (Exs. 726, 727, R. 5496–97). But for the 1932–33 season the Madison had a run following Riveria, Liberty, State, and Webster on Warner (Ex. 722, R. 5492), RKO (Ex. 728, R. 5498), Fox (Ex. 745, R. 5515), and Paramount (Ex. 734, R. 5504). The RKO contract (Ex. 728, R. 5498) provides 10 days clearance for the Schine theatres, but a definite clearance period is not stated in the other contracts (Exs. 722, 745, 734, R. 5492, 5515, 5504). For the 1933–34 season, the Warner and RKO contracts with Fenyvessy specified that the Madison and Monroe theatres follow Riviera, Liberty, State, and Dixie by 14 days (Exs. 724, 725, 729, 730, R. 5494, 5495, 5499, 5500), but the Fox contracts (Exs. 746, 747, R. 5516, 5517), the only other contracts avail-

[2] See the following table:

Theatre	Seating capacity	Location
Madison	1,381	Southwest.
Monroe	1,186	Southeast.
Dixie	992	Northeast.
State	1,062	East.
Liberty	1,256	North.
Riviera	1,508	North.

(R. 1667–72, I. A. 18, R. 230–31.)

able for this season, do not specify a definite number of days of clearance.

Schine acquired the Dixie in August 1932 and relinquished the Webster, the first time, in December 1933 (Int. Ans. 17–A, R. 230, 231).[3] When Schine acquired the Dixie the Madison lost its clearance over the Dixie, although the Dixie is a much smaller theatre; whereas when the Webster was dropped by Schine it ceased to enjoy the clearance it had previously held over the larger Madison and Monroe (R. 1680–81).

For the 1934–35 season, the clearance provisions in the Fenyvessy contracts with Paramount (Exs. 735, 736, R. 5505, 5506) and Warner (Exs. 788, 789, R. 5544, 5545) reserved to the four Schine theatres 14 days in which to play before the films became available to other theatres; the RKO contracts gave them 21 days (Exs. 731, 732, R. 5501,

[3] The Webster was reacquired in September 1940 from Max Fogel (I. A. 17–A, p. 9, R. 231) and retransferred to him pursuant to the Temporary Order of May 19, 1942. Schine's original interest in the Webster (R. 3231, R. 1672, I. A. 17–A, p. 9, R. 231) was acquired in 1927 for the purpose of controlling threatened competition with Schine's State. William Tishkoff had operated the Murray Theatre for a number of years when he, Max Fogel, and associates started construction of the Webster about three-quarters of a mile from the State. After construction was begun, Myer Schine and John May called upon Tishkoff and Fogel at the Murray Theatre. Schine said that the new theatre was too close to the State and was as economically unjustified as a new Schine theatre near the Murray would be (R. 2220–22, 2228, 2653–55). A few weeks later a partnership arrangement was worked out whereby the building was completed by the owning corporation and leased to an operating corporation in which Schine was given a one-half interest and a contract to buy and book the films for it (R. 2276–79, 2283).

5502), while the Fox contracts merely specified a run for the Madison and Monroe after the Schine houses (Exs. 748, 749, R. 5518, 5519). For this season, the Fenyvessy contracts with Metro do not refer to any clearance in favor of the Schine theatres (Exs. 737, 738, R. 5507, 5508), but the clearance provisions in the Metro-Schine contracts (Exs. 757–760, R. 5527–30) provide for a second (first neighborhood) run in the Riviera or Liberty, and Dixie or State, plus a third (repeat) run for Liberty, State or Dixie, within 21 days. Thus Schine was allowed a 21-day period within which to play such runs as Schine saw fit in all four theatres before the films became available to other Rochester neighborhood houses.

The run and clearance provisions of the Schine-Metro contracts for the 1935–36 season (Exs. 761–764, R. 5531–34) are identical with those found in the 1934–35 contracts. The Fenyvessy Metro contracts for the 1935–36 season (Exs. 739–740, R. 5509–10), however, specify that the clearances to which the Madison and Monroe are subjected is "14 days after State or Dixie, third run, if and as available. State or Dixie must play within 14 days of second-run or their clearance waived." Under this provision the clearance of the Schine houses over the Madison and Monroe could be extended to as much as 28 days, and this was often the case, particularly on pictures requiring a Sunday dating (R. 1675–6, 1678, 1685–86, 1690–91). The clearance provisions in the Fenyvessy contracts with Metro remained the same through the 1938–39 season (Exs. 785, 741–744, R. 5541; 5511–14).

The Fenyvessy Warner contract for 1935–36 (Ex. 752, R. 5522) limited the Schine clearance to 14 days, the same as the 1934–35 contract, but the contracts for 1936–37 and 1937–38 (Exs. 786, 787, 753, 754, R. 5542, 5543, 5523, 5524) merely provide "after Schine clearance" so that the provisions in the Schine contracts as to the actual number of days controlled. The Warner "repeat" run contracts, for the Liberty or Riviera (Ex. W–18, R. 5797), and for the State or Dixie (Ex. W–19, R. 5798) for the 1935–36 season, give Schine 21 days after notice of availability in which to date pictures on such repeat run in one or more of those theatres. The same provisions were carried forward in the clearance schedule which is part of the Warner franchise for the 1937–38 through 1939–40 seasons (Ex. W–3, R. 4429).

The Fenyvessy RKO contracts for three successive years, 1936–37 through 1938–39 (Exs. 755–756, 780, 783, R. 5525–26, 5536, 5539) all contain the unusual provision that Schine theatres are to receive the same clearance as granted by all major companies.[1]

Although the Schine contracts with the five major companies, referred to above, permitted additional runs, if desired, it appears from the play-off records of Universal and Columbia (Exs. 704–B to Q, R. 4262–77, 685–M to W, R. 4200–

[1] No RKO-Schine contracts are available after the 1934–35 season (Exs. R–3 through R–34, R. 5799–5828), and the deal sheets for the 1936–37 season (R–2 (1–51), R. 4815–4864) and those covered by the franchise for the 1938–39 through 1940–41 seasons (R–37 (1–83), R. 4866–4948) do not contain any clearance provisions.

4210), referred to below, that the manner in which Schine booked and played pictures was to have simultaneous first neighborhood runs in the Riviera and in the Liberty or State or Dixie, followed by an additional simultaneous run in the two remaining theatres which did not play the first-run (R. 1675–76, 1678, 1685–86, 1690–91). That these runs, giving priority to the Schine theatres over the Fenyvessy theatres, were arbitrarily set by Schine without any consideration of rentals received from the theatres involved by the major distributors, is shown by the following film rental comparisons:

For the 1934–35 season Schine paid Fox much less for his two prior runs at the State and Dixie than the Madison and Monroe paid for their later run.[8] For the 1935–36 season Warner got from Schine for each of the two prior runs at the State, Dixie, Liberty or Riviera less than a quarter as much as Fenyvessy paid for his later run at the Madison.[9] RKO in 1936–37 sold Schine

[8] The contract for the State or Dixie (Ex. F–87, R. 5970) for 35 pictures, all bought on flat rentals, amounts to approximately $1,125.00. For the same product, the Fenyvessy contracts for 33 pictures each at the Madison and Monroe (Exs. 748–749, R. 5518–19) amount to about $962.00 in flat rentals, and guaranteed an additional $825.00 against 25 percent of the gross on the six top pictures. Fenyvessy was required to book these six pictures for Sunday dates as selected by the distributor, but Schine was not required to give any preferred playing time.

[9] Schine's contracts for the Liberty or Riviera (Ex. W–18, R. 5797) and for the State or Dixie (Ex. W–19, R. 5798) for 30 pictures selected in each situation from the combined Warner-First National product, all at flat rentals, totaled about $675. The Fenyvessy contract for 59 pictures of the

two prior runs at the State, Dixie, or Liberty for less than a third of the film rental paid by the Madison and Monroe for their later runs.[7] Metro sold Schine three prior runs for 1938–39 at the State, Dixie, or Liberty at prices far below those paid by Fenyvessy for the later runs at the Madison and Monroe.[8]

The Universal play-off records for the seasons, 1934–35 through 1937–38, show the dates of, and

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same season's product for the Madison Theatre (Ex. 752, R. 5522) totalled approximately $2,500 in flat rentals and guaranteed an additional $65 against percentage terms of 30 percent on two pictures and 35 percent on two more. Fenyvessy paid $5.00 score charge per picture; Schine, $2.50.

[7] The Liberty contract (Ex. R–2 (26), R. 4840) is for 45 flat rental pictures and totals about $795.00; the State or Dixie contract (Ex. R–2 (24), R. 4838) is for 25 pictures at flat rentals and totals about $710.00. The Madison and Monroe contracts (Exs. 755–756, R. 5525, 5526) each called for 46 pictures at identical prices, and each contract totals about $1,800.00 in flat rentals, and guarantees $600.00 additional rental against 30 percent of the gross on the four top pictures on each contract.

[8] The Loew franchise (Ex. 618 (Par. B, p. 6, and Schedule II), R. 3952, 3958, 3985) shows that Schine licensed for the Liberty, State, and Dixie 54 features (Ex. 619, R. 3998), 8 to be played at from 25 percent to 40 percent, depending on what each particular picture grossed, and the remainder at flat rentals. The total flat rental, assuming all 54 pictures were made and released, for the run at the State or Dixie would amount to approximately $2,220.00; and the total for the Liberty run would amount to about $1,760.00. The Madison and Monroe contracts are for all of the pictures, with the top four at 40 percent against a guranteed rental of $175.00 each, and the next four at 35 percent against $175.00 each. Assuming 54 pictures, the total for the flat rental pictures on the Madison contract (Ex. 743, R. 5513) would be approximately $3,454.00, and on the Monroe contract (Ex. 744, R. 5514) about $2,880.00.

film rentals received for, the respective runs of features at the Riviera, Liberty, State, Dixie, Madison and Monroe theatres each season; the records for the 1937–38 season (Ex. 704–E, I, M, and Q, R. 4265, 4269, 4273, 4277) contain a carry-over of the yearly film rentals of the four Schine theatres, and for the Madison and Monroe, respectively, and for the four seasons indicated total figures are as follows:

Theatre	Ex. No.	Number of pictures	Film rental
Riviera or Liberty (initial run)	704 M	101	$8,270.00
State or Dixie (initial run)	704 Q	102	3,105.00
Liberty (repeat run)	704 M	97	1,927.50
State or Dixie (repeat run)	704 Q	97	1,970.00
Total, four prior Schine runs			15,272.50
Madison	704 E	119	5,321.11
Monroe	704 I	119	5,292.56
Total, two succeeding Fenyvessy runs			10,613.67

Fenyvessy licensed second-run in the city of Rochester from Columbia for the 1936–37 and 1937–38 seasons (R. 1680–81, 1700, Exs. 750–751, R. 5520–21). The clearance provision in the 1937–38 contract is for 14 days over all "subsequent" runs. Fenyvessy tried to negotiate for a continuance of this run for the 1938–39 season (R. 1700–01) but Schine had made a two-year franchise with Columbia for the 1938–39 and 1939–40 seasons which provided two simultaneous second-runs (Ex. C–102 (17) (19), R. 4991, 4993) at the Riviera or Liberty, and State or Dixie, respectively, with 21 days clearance over subsequent runs, and two repeat runs (Ex. C–102 (18) (20), R. 4992, 4994) at the Liberty, and State or Dixie, respectively, to be played within that clearance

period. The Columbia play-off records covering the two Fenyvessy and four Schine theatres for the 1937–38 and 1938–39 seasons (Exs. 685–M to W, R. 4200–4210) show that the film rental paid by the Madison and Monroe in 1937–38 for the second-run exceeded the aggregate film rental paid by the Riviera, State, Dixie, and Liberty for two second runs and two repeat runs in 1938–39 by approximately $679, as indicated in the following tabulation:

Exhibit No.	Season	Theatre	Run	Number of pictures	Amount
685-M	1937-38	Madison	2	26	$2,483.24
685-N	1937-38	Monroe	2	24	2,773.88
Total					5,257.12
685-R	1938-39	State or Dixie	2	25	1,122.50
685-S	1938-39	State or Dixie	Repeat	25	865.00
685-V	1938-39	Liberty or Riviera	2	25	1,520.00
685-W	1938-39	Liberty	Repeat	25	1,050.00
Total					4,557.50

As all six theatres charged the same admission prices, the competitive effect of holding the Madison and Monroe behind the four Schine houses was simply to channel into the four Schine houses the bulk of the neighborhood patronage without any corresponding sharing of the benefits of that patronage with the distributors by Schine in the form of film rental. The value of the prior runs enjoyed by Schine or even open booking with the Schine houses was so great that Fenyvessy offered to pay even higher prices than he was then paying (Ex. 765; R. 1682, 4328), but, with the exception of the Columbia second-run, noted above, he could not buy an earlier run from any of the major

distributors at any price (R. 1802). Fenyvessy tried particularly to secure a better run of Metro product (R. 1752–1760) and a number of letters passed between him and sales executives of Loew's bearing on this subject (Exs. 765 through 778, R. 1752–1759, 4328–30). They never at any time denied his claim that the character of his theatres (R. 1752) entitled them to a better run, but simply sought to evade the issue (Ex. 766, R. 1753, Ex. 769, R. 1755, Ex. 776, R. 1759), and it was not until July 1938 nearly two years after the Loew franchise was made with Schine that it was admitted that the franchise prevented any improvement in Fenyvessy's run (Ex. 770, R. 1755; Ex. 778, R. 1758).

Fenyvessy did not recall having written correspondence with other distributors on the question of run (R. 1760), but he talked to the branch manager of Warner, who said that he could not improve the run, but would give Fenyvessy the run Metro or other majors gave him (R. 1760–61). He talked to the RKO salesman who told him that whatever run Metro gave, he would give (R. 1761, 1764), and as noted above, page 5, the RKO contracts, starting with the 1936–37 season, provided that the Schine clearance would be like that granted by all other majors (Exs. 755–756, R. 5525–26, 780, R. 5536, 783, R. 5539). He also talked with the salesman of Paramount who simply refused to consider a better run (R. 1764).

The Fenyvessys finally sold the Madison, Monroe, Liberty and West End to Schine (R. 1764–65) for an amount approximately equal to what these theatres had cost (R. 1768). Chester Fenyvessy, whose father was then 84 years old

(R. 1776), and his brother, Paul, agreed not to compete in Rochester, except in the downtown area where they still owned the Capitol (R. 1665), for a period of 20 years from February 10, 1939 (Ex. 790, R. 4331).

Mrs. Florence Belinson (sister of Chester Fenyvessy) and her husband have operated the Little Theatre, 299 seats, located on the edge of the downtown section since 1931 (R. 1814–15, 1837). The Little always maintained a single feature policy and its evening admission price of 35 cents was well above the neighborhood price of 25 cents and always very close to the 40-cent price of the large downtown first-run houses. The Little never used any give-aways, and catered to a discriminating audience (R. 1815–16). Loew's Rochester theatre used Metro, Columbia, and United Artists product first run, and this product did not have a holdover or second-run in any downtown theatre; however, the product of the other major distributors (played first-run at the RKO and Paramount houses) was subject to a hold-over or second-run downtown (R. 1817–18).

From about 1931 to 1937 the Little played pictures that had been eliminated by the other downtown houses, foreign language and British pictures, and reissues of the major companies (R. 1815–16). About 1936 or 1937 the foreign-language pictures which the Little had used were no longer available and British Gaumont had gone off the market; the only pictures available were reissues or old pictures and this meant that the Little had to rely on pictures that had played every house in town, including the 10-cent houses (R. 1817); as a result Mrs. Belinson had to look

around to see what other product she could get (R. 1817). For the 1936–37 and 1937–38 seasons, while her brother had the second-run of Columbia product for the Madison and Monroe (R. 1818), she licensed a second-run of seven Columbia pictures which she played simultaneously with the Strand, Madison, or Monroe on the basis of a minimum 7-day showing and on terms from 25 percent to 40 percent of the gross (Exs. 793, 797, R. 5548, 5552). After her brother's second-run contract terminated she got two additional Columbia pictures, "You Can't Take It With You," and "Mr. Smith Goes to Washington," on a day and date run with Schine's Riviera, State, Dixie, or Liberty. These pictures were bought for a run of 7 to 14 days at $300.00 against 40 percent of the gross (Exs. 798–799, R. 5553–4). Nevertheless, when Mrs. Belinson tried to license the next important Columbia release "His Girl Friday," available shortly after "Mr. Smith Goes to Washington," she was informed that Columbia was unable to serve her any further pictures day and date with the Schine houses (R. 1824–25).

As the Metro and United Artists' pictures did not have a second-run downtown, Mrs. Belinson also tried to license these pictures second-run, or day and date with the Schine neighborhood theatres (R. 1825, 1831). When she tried to license a day and date run of Metro, its salesman advised her to take it up with the New York office (R. 1826–27); but when she took it up in great detail with Mr. Rodgers, general sales manager (Ex. 800, R. 1827, 4332), he advised her to see the branch manager (Ex. 801, R. 1828, 4333);

and in the end she was advised by the district manager (Ex. 802, R. 1830, 4334) that "another contract with the Schine interests for their subsequent run theatres in the city of Rochester" precluded any offer of pictures to her. Lehman, the branch manager of United Artists, said he would like the additional revenue but that she should present the matter to the home office. He also advised her to take the question up with Schine because without some concession from him he did not think that United Artists could serve her (R. 1831). When she followed Lehman's suggestion and made a special trip to Gloversville in July 1939 to explain to Myer Schine that she wanted only the privilige of playing selected pictures of United Artists on the same basis as the Columbia pictures, he refused to agree to such a run for her theatre (R. 1831–32) and she got no United Artists pictures (R. 1833).

SALAMANCA, NEW YORK

(Pop. 1940, 9,011—R. 2573)

During 1938, the only theatre in Salamanca, the Andrews, was operated by Schine (R. 231). At that time it owned a lot on the main street which it had bought in 1927 (R. 2663, Int. Ans. 31, R. 254). In the fall of 1938, three persons became interested in constructing a new theatre in Salamanca (R. 2210–11). They were Morris Gaby and Irving Cohen, who as partners had operated a theatre in Corning since 1926 (R. 2195–6), and Jack Zafron, a resident of Salamanca and a brother-in-law of Cohen (R. 2210). Gaby, Cohen and Zafron, accordingly, took various steps between October and December 1938, to acquire a site for their contemplated theatre. They inspected various properties, conducted negotiations, and Zafron prior to December 24, 1938, bought a building (R. 2210–12).

On December 24, 1938, C. R. Dickerson, Schine's manager in Salamanca, told Matthew Weber, publisher of the Salamanca Republican-Press, a daily newspaper, that Schine was going to build a new theatre on its lot on Main Street, that both Schine's district manager and an architect had been in Salamanca the day before to inspect this lot, that the new theatre would open about May 1, 1939,[1] and that Schine planned on

[1] This information was false in that the municipal authorities of Salamanca did not grant a permit for the construction of Schine's new theatre until October 6, 1941 (Ex. 1003, R. 2981), and the theatre was not opened until August 1942 (R. 2718).

continuing to operate the Andrews after completion of the new theatre (R. 2290–91). The same day Weber wrote a news story setting forth this information, which was printed on the first page of his newspaper in the December 24, 1938, issue (R. 2290, 2293, Ex. 854, R. 5221). Cohen saw this newspaper announcement four or five days later (R. 2209). Thinking that a new theatre was going to be built, as Schine had announced (R. 2213), he and his two associates dropped their plans and never did build on Zafron's property or anywhere else in Salamanca (R. 2213).

Salisbury, Maryland

(Pop. 1940, 13,313—R. 2575)

In September 1938, the defendants acquired the Arcade Theatre in Salisbury from Lee Insley, and the Wicomico from Marsh Gollner (R. 2060, Int. Ans. 17–A, R. 240). Both former owners weer taken into the employment of Schine (R. 2068). At that time, the Ulman interests were operating the Ulman and the New theatres in Salisbury (R. 2066–67). There are five[1] theatres in the town, the Arcade, Ulman and New Theatres being the first-run houses (R. 2060).

For the 1938–39 season, Ulman had Paramount, Fox, and United Artists (R. 2060–61.) He signed an application for all of the 1939–40 Paramount product (R. 2061), but Paramount refused to sell him more than half because, according to the Paramount salesman, the other half was to be sold to Schine (R. 2063). The Paramount franchise with Schine for the 1939–40 and 1940–41 seasons, made in February 1940, shows no contract for Salisbury (Exs. P–168—P–238, R. 5829–97); but in April 1940, the 1939–40 product began to play in the Schine theatres there (Ex. 1007, R. 4427). Ulman's contract for his half is dated July 18, 1939 (R. 2064, Ex. 268, R. 5365). Paramount thus reserved the other half

[1] In addition to the Arcada and Wicomico, Schine also has the Ritz, a colored theatre (I. A. 17–A, R. 240).

for Schine without requiring either a contract or a play-off until almost a year after Ulman's offer to license all had been rejected.[2]

Since the 1939–40 season Ulman has had to take a split of the Paramount product (R. 2065) and Schine has had for their theatres in Salisbury all of Warner, Metro, RKO, Columbia, and Universal, in addition to one half of Paramount [R. 2065–66, Ex. R37 (70), R. 1187, 4934].[3]

Schine, through several representatives, has attempted on several occasions to buy the Ulman theatres (R. 2067–68). A fire occurred in the Ulman in June 1941 (R. 2068), whereupon May offered to buy the property and agree not to rebuild a theatre on it (R. 3068). Subsequently, Ulman was contacted by Lee Insley, who tried to persuade Ulman to lease his theatres to Schine by pointing out that Schine was in a better position to buy pictures for them (R. 2068–69).

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[2] Only 15 pictures were played by Schine's of the 52 pictures released by Paramount for that season, 31 were released before April. Ulman played 27. (Ex. 687, R. 4228, 1007, R. 4427).

[3] In addition they had Republic product (R. 2065) and were buying some second run United Artists (Ex. 159, R. 5358).

Seaford, Delaware

(Pop. 2,804—Federal Census 1940)

Thomas P. Ayres has been operating the only theatres at Seaford and Georgetown, Delaware, since 1933 (R. 2069–70). In January 1939, the appellants acquired the Waller Theatre in Laurel, Delaware, and the Plaza Theatre in Milford, Delaware (Int. Ans. 17–A, 18, 23, R. 241). Laurel is six miles from Seaford and Milford is twenty (R. 2070). The towns of Harrington, Dover, Milford, Georgetown, and Seaford do not take clearance over one another and play pictures together (R. 2076).

On several occasions since 1938 the appellants have tried to buy out Ayres at Seaford and Georgetown (R. 2071). Myer Schine, Willard McKay, and John May offered him a partnership and he was told they could get pictures more cheaply than he could (R. 2072). On one occasion Lee Insley, a Schine representative, told Ayres he was foolish not to make the deal because Schine now had Laurel, Delaware, and that with their buying power they would very likely get the product away from him and Ayres probably would wind up by playing pictures of independent companies rather than the type of picture he was then playing (R. 2073). After Ayres refused to deal, Schine bought a lot in Seaford and Insley told Ayres they were going to build a

theatre there and "naturally" would get the product (R. 2077, Int. Ans. 31, R. 254). Ayres then built a second theatre in Seaford (R. 2073, 2077–78), and Schine has not yet built on its lot (Int. Ans. 31, R. 254).

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Seneca Falls, New York

(Pop. 1940, 6,452—R. 2573)

In 1935 there were two theatres in Seneca Falls (R. 889). One, the Strand, was operated by the Berenstein brothers (R. 889–90); the other theatre was the Seneca (R. 889), which Richard De Toto operated from July of 1934 through June 30, 1936 (R. 882–84). During this period De Toto ran a matinee and evening performance every day (R. 889), playing about five or six features a week (R. 906). He did a fair business and quite occasionally had full houses during the evening performance (R. 890).

In September 1935, Schine bought out the Berensteins (R. 893, Int. Ans. 17–A, R. 231), and then in April 1936 bought the building in which the Seneca was located (R. 893, Ex. P–47, R. 3783, Int. Ans. 17–A, R. 231). De Toto received a notice to this effect from the landlord (R. 892–93, Ex. P–47, R. 893, 3783) and a letter from Young, Schine's district manager, stating that he should pay the rent on the Seneca to Schaefer, manager of the Strand (R. 893, 894). In accordance with the letter, De Toto paid the May and June rent to Schaefer (R. 893–94, 897). Early in May of 1936, De Toto talked with Schaefer about a renewal of the lease on the Seneca (R. 897), which Schaefer said was impossible (R. 897). When Schaefer told De Toto that the lease would not be renewed De Toto hired an architect and had plans

and specifications drawn for another theatre in Seneca Falls (R. 898, 899, 958, Exs. P-48, P-49, R. 900).

De Toto vacated the Seneca theatre on June 30, 1936 (R. 884, 901-02). The following day he saw a sign on the Seneca which was placed there after he left, and which read "closed for alterations. Will reopen soon as a Schine theatre" (R. 901, 902). After De Toto saw this sign posted in front of the Seneca he did not go through with his plans to build the theatre (R. 902). Schine did not reopen the Seneca as announced (R. 902).

De Toto waited two years and then renewed his plans to construct a theatre on a site other than the first he had in mind (R. 902-03, 958-59). As in the first instance, he discussed the matter with an architect, and plans and specifications were drawn (R. 902-03, 958, Ex. 31). De Toto again saw a sign on the Seneca theatre in July 1938, which said that the Seneca would be open on August 20, 1938 (R. 906). His attention was also drawn to an announcement on the first page of the July 13, 1938, issue of the Seneca Falls newspaper relative to the reopening of the Seneca (R. 904-05). De Toto again did not go through with his plans for the construction of the theatre (R. 905) after this announcement. The Seneca did not open in August 1938 (R. 906) and has been kept closed continuously since June 30, 1936, when De Toto's lease expired (R. 902, 906, 920).

When the Berensteins operated the Strand there were no bank nights and no "give-aways" at this theatre (R. 907), but under the Schine management the Strand had both bank nights and

give-aways (R. 907, 959). During De Toto's operation of the Seneca his admission price was 15 cents (R. 889, 919, 944). Never during this period did the Strand ever charge more than 25 cents (R. 920). Shortly after the Seneca closed, Schine increased the admission price from 25 cents to 35 cents at the Strand (R. 919–20).

Shelby, Ohio

(Pop. 1940, 6,643—R. 2574)

In 1936 H. D. Shreffler was operating the Castamba Theatre in Shelby, which he had leased since 1922 (R. 1080–81). Louis Lazar wrote on January 14, 1936, to the owners of the Castamba Theatre inquiring whether they would be interested in renting or selling this theatre (Ex. 998, R. 2580), as Schine was expanding its properties in the State of Ohio, having "recently acquired a number of towns in the vicinity of Shelby, namely, Norwalk, Ashland, and Bucyrus." Shreffler wrote to Lazar on January 23, 1936, saying the letter to the owners had been handed to him, referred to a visit of Lazar and May and reaffirmed an understanding that "in event I decided to sell, you would have the first opportunity" (Ex. P–74, R. 3787, 1082). Lazar talked to Shreffler about leasing the Castamba two or more times during the Spring of 1936 and also suggested a partnership deal (R. 1083). Shreffler said he did not want to sell, that it was his theatre, and he wanted to run it (R. 1083). Shreffler began to remodel his theatre in June 1937 at an expense of over $30,000 (R. 1100).

During the 1936–37 motion picture season Shreffler played Fox,[1] Metro, Warner, and some

[1] He had Fox product for three seasons, 1936–37, 1937–38, and 1938–39, under a franchise agreement made in April 1936 (R. 1113–14).

RKO first run (R. 1084, 1146). Paramount's exchange manager at Cleveland took an application from him for a two-year (1937–38 and 1938–39) deal in January 1937 (R. 1089), but held up action on it.

Lazar renewed his request to Shreffler to join in a partnership with Schine, by letter dated July 3, 1937, stating in part "The time is rapidly approaching when the support and protection of a concern as large as ours would be of tremendous value, and I urge you to carefully consider the many advantages, against the possible disadvantages, which an association with us would give you" (R. 1091, Ex. P–75, R. 3788).

During the last of August or the first part of September 1937, while the Castamba was closed for remodelling (R. 1090, 1094), Lazar saw Shreffler in Shelby, told him that a circuit theatre operator named Dipson was coming into Shelby and that Lazar would like to work out a partnership with Shreffler (R. 1092). The substance of this conversation was that Dipson was ruthless and would smother Shreffler; that Schine would buy a new theatre which was begun in the town in the latter part of September by Richard Kemper, known as the State (R. 1092–93, 1127); if Shreffler would not join with them, and would pay one thousand dollars more for it than Shreffler could pay; that Schine would then take the product out of Shreffler's theatre and he would be unable to operate (R. 1092–93, 1094). Lazar returned three days later and was advised by Shreffler that he would join defendant's organization (R. 1094–95), and on September 21, 1937, an agreement to

this effect was signed by Shreffler and Lazar.[2] The pending Paramount deal was then approved by Paramount (R. 1089–90), nine months after they took the application (R. 1089).

Kemper opened the State, seating 450, late in November 1937 (R. 1127). At that time another theatre, known as the Opera House, located on the upper or second floor of the building in which it was housed, and seating about 325 (R. 1132), was operating in Shelby for several days a week (R. 1127, 1140–41). This theatre was playing RKO pictures, but the Cleveland exchange manager of that company, H. H. Greenblatt (R. 1130, 1298) in August of 1937 told Kemper that the exhibitor at the Opera House was unsatisfactory to RKO, had been causing it difficulty, and Kemper could have this product if he arranged to take

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[2] The agreement, between Shreffler and Belpik Theatre Corporation, provided that Shreffler would organize the Schine Shelby Corporation, obtain for it a 20-year lease on the Castamba Theatre, assign all his sound and other motion-picture projection and seating equipment to the new corporation, and assign one-half of the stock of the new corporation to Belpik. It also provided that Belpik was to have a contract for general management of the theatre, for which services it has received 5% of the gross receipts of the theatre. Each party was to advance 50% of the working capital. $15,000 was to be paid Shreffler and was to be applied toward the mortgage debt resulting from the theatre remodelling, and represented one-half that cost. Shreffler guaranteed the remodelled theatre would seat 748. Shreffler and his son were to be employed by the defendants for two years at a combined salary for the two of them of $50 per week. This contract was performed (Ex. 96, R. 5196, 1100; I. A. 17–A, R. 1078, 236; I. A. 15, R. 1080, 221, 1079; I. A. 19–C, R. 250, 1079–80; R. 1105–06).

over operation of the Opera House (R. 1128–29; 1148–50). Before opening the State he also contacted the Cleveland exchange managers and obtained the product of Universal, United Artists and Columbia on first run (R. 1127, 1131–32, 1146). In the Spring of 1938, Kemper took over the operation of the Opera House but did not get the RKO product (R. 1130). Greenblatt told him this product was committeed by his New York office to Schine, but if Kemper would contact Lazar, possibly he would release some of the RKO product (R. 1130–31). Lazar refused to release any of it to Kemper (R. 1131–32).

Saul Silverman[a] approached Kemper while the State was under construction in 1937 (R. 1132), while Lazar was negotiating with Shreffler, and suggested that Kemper work out a deal with Lazar, but Kemper refused (R. 1133–34). In the Spring of 1938, Silverman introduced Lazar to Kemper (R. 1134–35) and Lazar arranged to meet him in Bellefontaine. At that meeting he told Kemper that the Castamba operation wasn't too profitable, said Kemper could not expect to get any more product, and suggested Kemper sell to Schine and become one of their theatre managers (R. 1135–36; 1137). Over a period of six or seven months in 1938 Lazar saw Kemper numerous times at Cleveland, Bellefontaine, and Mansfield (R. 1136). In July 1939, Lazar said he would discuss a deal with J. Myer Schine for the State with Kemper (R. 1137–38), and if it was

[a] District Manager of Schine Theatres in Ohio (R. 1133; Silverman Aff. filed on behalf of defendants Sept. 27, 1939, re motion for Prel. Inj.).

concluded they would close the State and operate the Opera House because of lease provisions of the latter requiring it be kept open two days per week (R. 1138, 1139, 1141–42). Kemper heard nothing further from Lazar, turned over his interest in the theatre to his associates and retired from the operation (R. 1139, 1145).

Syracuse, New York

(Pop. 1942, 205,967—R. 2573)

In 1935 the five first-run theatres in Syracuse were the Eckel, Keith, Paramount, Loew, and Strand (R. 2019–20, 2713). The Empire, a downtown 1,500-seat theatre (R. 1892), was sometimes a first-run house (R. 1918) and at various times played all runs and operated under all policies (R. 1883, 1918, 2165). Prior to 1929, the Syracuse-Strand Theatre Corporation acquired a ground lease of the site of the present Strand Theatre and constructed the Strand Theatre building thereon. In 1929 the company gave a ten-year lease on the theatre to Warner, which operated it until about 1935 (R. 1939–41).

At this time RKO was operating the Paramount and Keith theatres, and Schine was operating the Eckel (R. 2665, 2713), which it had acquired in 1927 (R. 2665, Int. Ans. 17–A, R. 231). During 1935 Schine and RKO formed a partnership and pooling arrangement of all their first-run Syracuse theatres and first-run product, and organized the S. K. E. Operating Company for this purpose (R. 2665, 2712–14, Ex. 1004, 1005, R. 4415, 4422). RKO, in addition to its own product, then had a franchise on the Paramount product, and Schine had a franchise on Fox pictures. After the S. K. E. Company was formed, Schine and RKO assigned their franchises and product rights to it, and it obtained a franchise for the Warner product (Ex. 1004, R. 4415). Shortly

thereafter, the S. K. E. Operating Company acquired the Strand Theatre lease from Warner (R. 1939–41).

Under the pooling agreement, the control of this corporation was equally divided between RKO and Schine. Schine operated the theatres and RKO booked and bought the pictures (R. 1941, 1942, 2666, 2713). From 1935 to 1940, Schine received 40 percent of the profits and RKO 60 percent. Since that time Schine has received 30 percent and RKO 70 percent of the profits (R. 2666, 2713–14, Ex. 1004, 1005, R. 4415, 4422). The partnership between RKO and Schine is still in force (R. 2666, 2714, Ex. 1005, R. 4422).

In the fall of 1939 Charles V. Martina, operator of a theatre at Albion, New York (R. 1869), told the Buffalo branch managers of Columbia, Fox, Metro, Paramount, RKO, United Artists and Universal and a salesman of Warner that he was planning on taking over the Empire, wanted to negotiate for pictures and desired to buy some first and second runs and carryovers (R. 1870–72, 1874–79). In reply to his request for product, a Warner representative told him that Schine had the product all tied up and could do nothing for him (R. 1874). Paramount, Fox, RKO, Universal and Metro said that he should wait until he obtained a lease on the Empire (R. 1875, 1876–78). In January 1940, Martina leased the Empire (R. 1869, 1879–80). On or about the first of February 1940, Martina again talked with branch managers and representatives of all of the major film companies, in each instance advising that he had received the lease on

the Empire, and desired to buy first and second-run pictures and carryovers (R. 1880–84). Maw, Metro branch manager, told him that he could not make a commitment for pictures (R. 1880–81). Robinson, Paramount branch manager, said that Schine had engaged all the Paramount pictures, and the best Paramount could do would be to give Martina a cowboy picture (R. 1881–82). Boasberg, RKO branch manager, told him that Schine had all the product, and all that he could give Martina would be some news reels (R. 1882). Samson, Fox branch manager, advised Martina that Schine played all the Fox product and that he had no opportunity of buying any pictures (R. 1882–83). Scully, Universal branch manager, told Martina that Schine had tied up the product and that he, Scully, did not see how Martina could obtain any of it (R. 1882–83). Fox, Columbia branch manager, stated to Martina that all Columbia product was contracted for, but he would advise Martina if there were any rejected pictures (R. 1883). Lehman, United Artists branch manager, said he would see what he could do (R. 1883–84). Rich, Warner salesman, told Martina that Schine had all the Warner product, but Schine might reject some pictures (R. 1883). Martina was offered no other major product (R. 1885).

The result of these attempts to obtain product was that Paramount gave Martina only a cowboy picture which had never played before in Syracuse, and nothing else (R. 1884, 1886, 1889). RKO gave him nothing but news reels (R. 1884). Fox, Universal, Metro, and Columbia gave him nothing (R. 1884–85). For a rental of $600 Warner gave Martina a foreign Schine reject (R.

1884, 1886–87), the picture never having played in Syracuse before (R. 1884–85). United Artists gave him two pictures (R. 1885), one of which was a British propaganda film (R. 1886), and neither had theretofore been shown in Syracuse (R. 1884–85, 1886, 1887). In addition to this major product, Martina bought some independent western pictures (R. 1886, 1892).

Martina took possession of the Empire on March 10, 1940 (R. 1869), at which time the theatre was closed (R. 1883). Before Martina opened the Empire on March 23, 1940 (R. 1884), he actually spent between about $21,000 and $26,000 in cash on the theatre (R. 1911, 1925, 1926–27, 1937). Within about a week thereafter, he renewed his efforts to buy product (R. 1887). In this behalf, he spoke to all branch managers, making at least one trip to Buffalo for this purpose (R. 1887, 1889, 1891). He asked for first and second runs, reissues and carry-overs (R. 1891). Warner, RKO, and Paramount offered him nothing (R. 1889–90). The branch manager of RKO remarked that Martina should know that Schine had tied up all the product (R. 1889). Fox's manager said that it had nothing and could not take the product away from Schine (R. 1889–90). Universal's manager told him the same thing (R. 1890). Metro's manager said that nothing was available and could make no future commitments (R. 1890). Columbia's manager withheld any offer of good product (R. 1890).

Martina's operation of the Empire lasted three weeks and six days, ending on April 18, 1940 (R. 1884, 1887–88). When he closed the theatre on that date, he had sustained losses on the theatre

venture of about $35,000 (R. 1911): Schine took over operation of the Empire about January 1, 1941, and has operated it ever since (R. 1893, 1981, Int. Ans. 17-A, R. 232).

In the fall of 1939, Schine operated the Strand (R. 1895). During this period Schine played double features with one change a week and sometimes three pictures with no stage shows (R. 1896, 1898). This playing policy continued through December 1939 (R. 1895). Shortly after Martina signed an application for a lease on the Empire, Schine started to present stage shows and to use three or four pictures a week with two changes (R. 1895–96). On the day of Martina's opening, Schine presented a big movie star in person and a big Fox feature (R. 1896). Prior to January 1, 1940, Schine did not operate every day at the Strand, did not play stage shows, and played less pictures than it did after the first of the year (R. 1897–98). During the following January and February, Schine made two changes a week unless he had a stage show when he would have one change a week (R. 1898). This new playing policy, which Schine inaugurated shortly after Martina applied for his lease, was consistently followed by Schine until the week after Martina closed the Empire. Schine then closed the Strand (R. 1896).

In 1939 the S. K. E. Operating Company lease on the Strand had been renewed for the period September 1, 1939, to September 1, 1941, for a rental of $27,500 a year (R. 1939–40, 1941, Ex. 811, R. 5219). The Strand was again closed in the summer of 1941 shortly before the expiration of their two-year lease, and Schine began negoti-

ating for a new lease (R. 1943–44, 2738). At this time, the carrying charges alone on the Strand Theatre were between $21,000 and $24,000 a year, covering such items as taxes, maintenance, and insurance (R. 1949, 1951). Myer Schine offered to take a new lease on the Strand at a rental of $18,000 a year plus a percentage of the net profits, if any (R. 1948). The owners rejected this offer (R. 1948), Schine refused to pay more and by the end of August his interest in the Strand ended (R. 1942, 1949).

The owners of the Strand took immediate steps to find a tenant and communicated with the major film companies (R. 1950). No interest was displayed by any of the five major distributors who operate theatres (R. 1950–51). Hubert P. Wallace, who had been operating the Capitol Theatre in Auburn (R. 1950), and the owners of the Strand Theatre Building then formed a new corporation to operate the Strand called the Syracuse Community Strand Theatre Company, each acquiring an equal interest therein. This corporation took a lease on the Strand at $20,000 a year plus a percentage of the profits (R. 1951–52, Ex. 812, R. 4335, 1978) and operated it from September 20, 1941 (R. 2002, 2092), to January 26, 1942 (R. 1953, 1979).

After acquiring the Empire on January 1, 1941 (R. 1893, 1981, Int. Ans. 17–A, p. 10, R. 232), Schine played some road shows there until the summer (R. 1981). It was then closed until about a week before the Strand opened (R. 1981, 2021). It was then operated during the entire period Wallace ran the Strand (R. 1979), and closed two weeks later (R. 1983). During this

period, the Empire played twenty-one major pictures, two of which were Fox, five Metro, three Paramount, one RKO, five Universal, and six Warner features. All of these were either 1940–41 or 1941–42 releases (Ex. 832, R. 4374). Its evening adult admission prices were twenty cents plus tax for double features, without stage shows.

Wallace, who managed the Strand, sent telegrams on September 9, 1941, to all the major companies except Warners (R. 1983). Thereafter, he negotiated for product with their salesmen (R. 1983). About September 11 or 12, Wallace saw Maw and Harris, Metro branch manager and salesman, reespectively (R. 1983), and asked them for any first-run pictures which the Loew theatre was not playing, and for second-, third- or subsequent-run product (R. 1984). Maw said that he had no first-run pictures which the Loew theatre was not playing, that he had second- and third-run customers, but would try to supply the Strand with product (R. 1984).

Two days later Wallace asked Maw for some pictures made since 1930 which had been definite box-office attractions (R. 1985). Maw replied that Schine had asked for these pictures in July for the Empire, but he would do what he could to make a deal on 1940–41 product (R. 1985). Thereafter Harris offered Wallace a split of 52 pictures of the 1940–41 product (R. 1985–86). These pictures were to be played at admission prices of 28 to 35 cents, after all other theatres in Syracuse, including the neighborhood houses, had shown them (R. 1986–87). The other 26 pictures were to be played by the Empire, and Maw himself was to select the split which went

to the Strand and that which went to the Empire. Wallace was to have no voice in the selection of any of the 52 pictures (R. 1986). To this offer Wallace objected as being unreasonable (R. 1986). When he pointed out that these pictures had run in theaters charging admission prices of 15 and 20 cents and asked Harris to justify the fairness of his offer, Harris made no effort to defend it (R. 1986). That discussion ended the negotiations for the Metro product (R. 1987).

About September 14, 1941, Wallace asked Rosineau, Paramount Syracuse salesman, for some first, second, third, or subsequent-run product and was told he could have several films which were from three to eight years old and a production called "World in Flames," which Wallace rejected (R. 1992). Rosineau refused to sell Wallace any second or third runs because he had customers for these but said he would talk with Robinson, branch manager, about subsequent runs. About October 1, Rosineau told Wallace that he could offer a block of five pictures after they had been played by all of the runs in Syracuse (R. 1992). He said that therefore they would not be available to Wallace until after January 1, 1942 (R. 1992–93). In the course of the conversation, he advised that the Strand would have to charge a minimum admission price of 28 cents because it was a large, beautiful theater (R. 1993). A few days later he again saw Wallace and offered him three western pictures to be available in February, April and June 1942, respectively. Wallace declined this offer (R. 1993). Thereafter, he had no further discussion with or offers from Paramount (R. 1994).

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Pursuant to the telegram which Wallace sent to Fox on September 9, 1941 (R. 1983, 2083, 2750), Samson, Fox branch manager (R. 1882, 2752, and Rowell, Syracuse salesman for twenty-five years (R. 2749, 2764), called at the office of the Strand on September 11, 1941 (R. 1986, 2749-50). Wallace said he wanted some first, second, third or subsequent runs for the theatre. (R. 1987, 2751). Samson replied that because Schine had been an established account in Syracuse (R. 1987, 2751), no first-run would be available to the Strand (R. 2751). Wallace then asked Samson for some pictures rejected by Schine (R. 1987). Samson thereupon stated that Schine did not reject pictures (R. 1987). Samson and Rowell said no second-run pictures were available since Fox had an established account at the Regent Theatre (R. 1987, 2751), and no third-run pictures were available because Fox had an established third run which they had sold many years (R. 1987, 2751), and further that the Strand "was not entitled" to play as a third-run house (R. 1987). Wallace then asked for any other kind of product (R. 2751), but Samson replied that he could not offer Wallace any subsequent runs, as a sale of such runs to the Strand would upset his subsequent-run business in Syracuse (R. 1987). Rowell then said he would consider the possibility of giving Wallace some old and revival pictures (R. 1988).

Fox made no deal that day, but as Samson and Rowell left the Strand office they told Wallace they would consider the matter and see him later (R. 2751). Rowell called on Wallace on October

3 at the Strand office (R. 1988, 2123, 2752). The theatre was then already operating (R. 1988).

Rowell told Wallace that Samson had decided to make an offer (R. 1988). A discussion relative to the playing policy of the theatre then followed (R. 2125–26, 2753, 2765). Wallace said that he would charge 25 cents five days a week for pictures without bingo and 50 cents admission two days a week when $650 in bingo prizes were given away (R. 2754, 2763). Wallace further said that he would have two changes in pictures a week and would run from Saturday through Tuesday and Wednesday through Friday first and second-run pictures if available and any other product which was for sale (R. 2754). Wallace had already instituted bingo games, giving away $650 on Thursdays (R. 2125–26, 2130). He and Rowell talked about excluding from the total receipts on bingo nights, in computing film rental, the difference in admission price between the regular admission without bingo and that charged when the game was played (R. 2125–26, 2761).

Rowell then made a definite proposal reduced to writing on three deal sheets in Rowell's handwriting (R. 1988, 1990, 2123, 2752–53, 2754, Ex. 818, R. 4353, Def. Ex. D–156, D–157, D–158; R. 5189–90). Ex. 818, consisting of three sheets, are carbon copies of Defendants' Exs. 156, 157, and 158 except for the words "650 Bingo—from gross" and "50–50 over $1200" which Wallace later added to his copies of these deal sheets (R. 1988–89, 2123, 2125, 2767). Attached to the copies handed to Wallace was a release schedule (R. 1986, 2123, 2125). On each of the three sheets

of Ex. 818 is Rowell's signature (R. 2125). Each of the deal sheets constituted a separate offer for pictures and Wallace could have bought one or all (R. 2759–60, 2761). There was no duplication of pictures among those listed on the three sheets (R. 2759).

On page one are listed two columns of pictures. In the left-hand column is shown a group of outstanding or top grossing old pictures (R. 1989–90, 2754). These pictures were probably from five to eleven years old (R. 2127), some of which had had some box-office value (R. 2127), and most of which had played in Syracuse many years before October 1941 (R. 2128).

The other column contains a list of pictures which had relatively little box-office value (R. 1989, 2127–28). Rowell said that Wallace could buy the pictures shown on the front page in blocks of five (R. 2754).

The second page of these deal sheets (Ex. 818, R. 4353; Def. Ex. D–157, R. 5189) shows a block of five pictures of current products (R. 2129). On the top of the page Rowell wrote the words "Ahead of Empire Theatre" (R. 2124, 2757, 2767). The five pictures, their prices and availability dates[1] were listed as follows:

> Charlie's Aunt—35 percent with guarantee of $200, available October 29, 1941.
>
> Private Nurse—$75, available November 20.
>
> Wild Geese Calling—$150, available December 10.

[1] Rowell further stated that the dates on which Wallace would play these pictures would have to be inserted in his contract (R. 1990, 2757).

Sun Valley Serenade—35 percent with guarantee of $200, available December 10.
Dressed to Kill—$100, available December 10.

The last two pictures were to be played on the same bill (R. 2130, Ex. 818, R. 4353, Def. Ex. D-157, R. 5189). The dates written opposite each picture were dates when all of the Syracuse theatres except the Empire might have already played these pictures (R. 2165). At the time of his visit to Wallace on October 3, Rowell had already sold this group of five pictures to seven Syracuse theatres, including the first-, second-, and third-run houses (Exs. 963–968, 979, R. 5636–41, 5652). He represented to Wallace that they would play first run at Schine's Paramount, Eckel or Keith theatres. Then, after a clearance of thirty days, a second run at the Regent and then a third run at the Cameo seven days after the Regent, being followed generally by all other theatres throughout Syracuse in the order in which they happened to buy (R. 2768–70, 2771, 2772, Exs. 963, 968, 979, R. 5636, 5641, 5652). When Rowell made the offer of this block of five pictures to Wallace and wrote the availability dates on the deal sheet (R. 2757), neither he nor the contract he proposed gave Wallace any assurance that these pictures would not be sold thereafter to the other Syracuse theatres, which had not already bought them, except the Empire, and made available to them before the availability dates for the Strand (R. 2757, 2776). Rowell said that Fox then could have sold all the subsequent-run theatres in Syracuse, includ-

ing those charging a 10-cent admission, after contracting with Wallace and could have permitted them to play the pictures before Wallace did (R. 2776). The runs, admission prices and film rentals specified in the contracts of the other Syracuse theatres which had already bought this block, are tabulated below, with the offer to Wallace.

Application date of contract	8/8	8/8	8/8	9/12	9/12	9/12	9/12	Offer to Wallace
Theatre	Paramount, Keith, Eckel or Strand.	Eckel	Regent	Cameo	Novelty	Happy Hour	Harvard	Strand.
Runs	First	Move-over	Second	Third	Sub	Sub	Sub	Sub.
Eve. Adult Min. Adm. Price:	None	None	$0.25	$0.20	$0.15	$0.20	$0.20	$0.28.
Charlie's Aunt	35%	25%	(Sold under franchise specifying various terms for films in various brackets. No price for these particular films specified.)	35% with guarantee $100.	$25	$35	$27.50	35% with guarantee of $200.
Dressed to Kill	$360	$165		$30.00	$15	$30	$17.50	$100.
Wild Geese Calling	30%	25%		$100	$17.50	$45	$22.50	$150.
Private Nurse	$360	$165		$30	$12.50	$15	$15	$75.
Sun Valley Serenade	35%	25%		$100	$25	$35	$27.50	35% with guarantee of $200 to be played with Dressed to Kill.
Total Guarantee	$720	$330	See above	$360	$95	$200	$110	$725.
Number sold on percentage.	3	3		1	None	None	None	2.
	Ex. 963	Ex. 964	Ex. 979	Ex. 965	Ex. 966	Ex. 967	Ex. 968	Ex. 818

The third page of Ex. 818, R. 4353 (Def. Ex. D–158, R. 5190) shows a group of 25 selected pictures of the 1940–41 season, 10 to be sold for $100 each and 15 for $50 each (R. 1989–90, 2128, 2759). This sheet bears the words "no run" which was written by Rowell while in Wallace's office (R. 2128). Almost every theatre in Syracuse had already played these pictures (R. 2129).

Wallace told Rowell that the proposition he made for the pictures on the three sheets of Exhibit 818 did not constitute a valid offer (R. 1991). Rowell replied that Samson had instructed him to make the proposition, that he and Samson had considered the matter thoroughly, and that Fox could not make a better offer (R. 1991). Wallace thereupon rejected the offer (R. 1991, 2781).

In September 1941, before the Strand opened, Ed Smith, the RKO salesman, took five contract applications from Wallace for a subsequent run on "Tom, Dick and Harry" at $100.00; a second run on "Reluctant Dragon" for $150.00; a second run of "They Met in Argentina" for $100.00 and first runs of "Hurry, Charlie, Hurry" and "They Meet Again" for $200.00 each (Ex. 819, R. 1998, 2896, 2898), which were duly forwarded to the RKO exchange at Buffalo (R. 1998, 2888, 2896–97). At the same time he forwarded a memorandum he made of the dates on which these and two other features were to play the Strand (Def. Ex. D–168, R. 2849, 2891, 2892, 2898) in accordance with conversations had by him with Wallace (R. 1995, 2087, 2088, 2094, 2896), Lux, the RKO exchange manager (R. 1995–96, 2850,

2851, 2883), and the booker at the exchange (R. 1995-96). This memorandum shows that the dates of September 20 to 23 were OK'd for "Jungle Cavalcade," an animal picture (R. 2002, 2848), and "Flying Down to Rio," a reissue (R. 2093). The Strand opened with those two pictures (R. 2005). The same memorandum shows that dates of September 24 through 26 were OK'd for "Hurry, Charlie, Hurry" and "They Met in Argentina," dates of September 27 through 30 were OK'd for "They Meet Again" and "Reluctant Dragon" (Def. Ex. 148), and "Tom, Dick and Harry" was OK'd for October 15 through 17. After the memorandum reached the RKO exchange, lines were drawn through the notations as to "They Met in Argentina" and "They Meet Again" (R. 2896), and on September 18, 1941, RKO wired Wallace that it could not supply these pictures (Ex. 820, 831, R. 4355, 1996, 2162, 2084-85). The contracts for the second and subsequent-run pictures were approved, and the Strand was permitted to play them (R. 2002-03, 2021, Ex. 832, R. 4374).

"Hurry, Charlie, Hurry" and "They Meet Again" were released and made available for first run in Syracuse on July 25, 1941, and July 11, 1941, respectively (Ex. 634, R. 4078), but had not been picked up by the RKO-Schine first-run houses at the time Smith negotiated for them with Wallace (R. 2093, 2095, 2100). "Hurry, Charlie, Hurry" was played first-run at the Eckel on October 30 through November 5, 1941, and "They Meet Again" was played first-run at the

Eckel from September 25 through October 1, 1941 (R. 2986).[2]

Wallace had advertised those pictures before he got the telegram of September 18 (R. 1996, 2098), and when Wallace complained to Smith shortly after the message arrived (R. 2001), Smith said he tried to prevent this action and had discussed the matter with Lux but with no success (R. 2002).

On October 7, 1941, Wallace again applied to RKO for pictures for the Strand (R. 2107). RKO thereupon agreed to sell him six pictures (Def. Ex. D-117, D-118, R. 6196-97). One was a foreign film at least one year old. The other five were from three to eight years old (R. 2170-71).

The Strand, under the Wallace management, operated from September 20, 1941, through January 25, 1942 (R. 1951, 1978-1980, 2002, 2092, 2170). During this time Wallace did not operate on forty days, having kept the theatre closed for lack of films that were box office attractions (R. 2007) on eight occasions aggregating twenty-nine days and leased it for eleven days (R. 2006-08, 2114-20). With the exception of one Columbia and three RKO features, he played nothing but ten stage shows, some foreign and independent product and single-reel and short-subject pictures (R. 2005-08, 2094, 2112-15, 2117-18, 2166-68).

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[2] "They Meet Again" was played on a double bill with "Sun Valley Serenade," a Fox picture, although Fox stipulated that Wallace had to play this film on a double bill with another Fox feature in its offer to him (R. 2986, Def. Ex. D-157, R. 5189).

During the operation of the Strand under Wallace, the theatre lost between $15,000 and $20,000 (R. 1952–53, 1954). At no period did it make any profit (R. 2003). The failure of the theatre was due to a lack of suitable major product commensurate with the desirabilty of the Strand as a theatre (R. 2003, 2006).

After Wallace withdrew from the Strand operation on January 26, 1942 (R. 1978–79, 2170), the owners ran the theatre themselves for three or four months (R. 1953). Stanley Falk, president of the owning company, tried to buy product for the theatre from Maw, Buffalo branch manager of Metro but he received only inferior pictures (R. 1953–54). Falk also talked with Sydney Samson, Fox branch manager in Buffalo, who told him that Fox had no pictures of any kind for the Strand and that it was foolhardy to run the theatre (R. 1952–53). During this period, the Strand played stage shows plus old, poor and independent pictures (R. 1953–54), and Falk and his associates lost considerable money (R. 1954) before they finally closed the theatre in the spring of 1942.

Van Wert, Ohio

(Pop. 1940, 9,227—R. 2574)

Schine bought property in Van Wert in February 1935 (Int. Ans. 17, R. 237) and began construction of a new theatre about May 1935 (R. 651) which was opened about August 1935 (R. 657). It was called the Van Wert and seated 802 (Int. Ans. 18, R. 237). Prior to 1935, there were already two theatres, the Strand, 710 seats (Int. Ans. 18, R. 237), operated for a number of years by Clifford Dasher and Tom Evans (R. 651), and the Ohio, 345 seats, operated by Mr. and Mrs. Carl Moore since October 1934 (R. 656–57). For the 1934–35 season Dasher used the product of Paramount, Metro, Fox, RKO, and Warner first-run (R. 651) and the Ohio had a first-run of United Artists, Columbia, and Universal (R. 657).

Dasher had heard that somebody was coming into Van Wert with a new theatre (R. 652) and in the spring of 1935, a couple of months before the selling season, made a deal for the 1935–36 Fox and RKO products (R. 652). Paramount told him in March that they were not ready to sell and then told him in June that the product had been sold to Schine (R. 652–53) although the Schine contract (Ex. P–45) not printed bears application date of September 17, 1935, and was not approved until March 27, 1936. Dasher also tried to negotiate a deal with Metro in March but was informed that they were not ready to sell at that time, and when he saw Drew, the branch manager, in June, he was told "Schine . . . . won't just stand for selling your town, he wouldn't take any of the other towns" (R. 653–54).

In June 1935, at the time Dasher was unsuccessfully trying to license the Metro and Paramount 1935–36 product, he called at the Fox office relative to dating of the current pictures on his 1934–35 contract. The branch manager, Schmertz, told him that he had received a letter from Schine, that Dasher had got him "in a hell of a mess" by buying the Fox 1935–36 product, and it looked like they would have to take half of it away from him. When Dasher said he wouldn't stand for such treatment Schmertz suggested that he get together with Schine on a deal and offered to send Schine to see him (R. 654–55). A short time later May and Lazar called on Dasher and Evans and wanted to know whether they would be interested in selling or leasing; they said they preferred to sell, but Schine preferred to lease, and in August a lease was made, and Schine took over the operation of the Strand on September 1, 1935 (R. 655–56).

The Moores tried unsuccessfully to negotiate for a continuance of their United Artists' first-run before the start of the 1935–36 selling season (Exs. P. 17, P. 18, R. 3772), but were finally informed in August that the product had been sold to Schine out of the New York office (R. 657–58).[1] The Moores were able to license Columbia pictures first-run for the 1935–36 season, but for the 1936–

[1] For the 1934–35 season the Ohio had paid a total of $1,234.50 for 29 United Artists' pictures. For the 1935–36 season the Van Wert and Strand paid $296.33 for 5 pictures, and the Van Wert played three more pictures on a blanket contract from which the film rental paid cannot be computed (Ex. 71-G, R. 4308–09).

37 season their negotiations were terminated when the branch manager told them that a deal with Schine had been made in New York (R. 660).[2]

The Moores licensed Universal first-run for the 1935–36 season (R. 661) on April 3, 1935 (Ex. 704 S, R. 4279), but did not play off the contract because the first-run deal was exchanged for a second-run (R. 662, 665) and the first-run was cancelled as of February 28, 1936 (Ex. 704 S, R. 4279). The second-run pictures were not played either as the Universal salesman asked them to cancel the second-run contract and take a new first-run contract (R. 662–63). Mrs. Moore then told the salesman that if they made a new first-run deal it would have to be for the 1936–37 season as well as the 1935–36 season (R. 663), but the salesman stated he could not do that because Schine might buy the product (R. 663).[3]

[2] For the 1935–36 season the Ohio paid about $1,337.50 for 37 Columbia features and $157.50 for 12 westerns, or a total film rental of $1,495.00. For the 1936–37 season the Strand-Van Wert deal paid Columbia $680.00 for 20 pictures, including no westerns (Exs. 685 X, Y, R. 4211–12).

[3] The final sheet in the Universal play-off records (Exs. 704 R through W, R. 4278–4283), which is for the 1939–40 season, contains the following recapitulation of the film rentals and number of pictures played by the Ohio and by the Van Wert or Strand from 1934–35 to 1939–40:

Theatre	Season	Number pictures released	Number pictures played	Rental
Ohio	1934–35	33	31	$1,063.50
Van Wert-Strand	1935–36	22	21	372.50
Van Wert-Strand	1936–37	34	21	697.50
Van Wert-Strand	1937–38	40	23	743.50
Van Wert-Strand	1938–39	42	19	824.00
Van Wert-Strand	1939–40	42	27	996.75

[These switches are explained in the letter of September 23, 1935, from the Albany office of Universal to McCarthy, eastern sales manager (Ex. 370, R. 3892), which reads as follows:[4]

> In Van Wert, Dave Miller (District Manager) advises that upon Mr. Grainger's (General Sales Manager) suggestion, he took away the first run from the opposition and sold him a second run. Lynch claims that he does not want a second run policy to prevail at the second run opposition and has promises from other major companies that they will not sell second run. Wants Dave Miller to reinstate first run at opposition as they will give up the pictures for this town. [Parentheses ours.]

Starting with the 1936–37 season the Moores had no first-run product (R. 667), but were able to license a second-run of Metro for the 1935–36 and 1936–37 seasons (R. 667–68; Ex. 606-B, R. 2535). In the summer of 1937, the Metro salesman called at the Moores' home and said he could not offer the 1937–38 second-run at that time but for them to see Mr. Drew (R. 669). About September they saw Drew who told them that the second-run had been sold to Schine (R. 669). In the spring of 1938, however, Drew called up the Moores and asked them to meet him at Lima, Ohio, where he asked them if they would be interested in a part of the Metro product second-run; that Schine had not bought the product (R. 671–72).[5] The Moores turned this proposition down

[4] Partially stricken by the court (R. 3089).

[5] This statement was false as the second-run product for Van Wert for the 1937–38 season had been bought by Schine on August 7, 1937, the same date the second-run deal at Mt. Vernon was made, by a rider to the Schine Franchise (Ex.

because they wanted all of the pictures, but Drew said he couldn't make such a deal on account of his agreement with Schine (R. 673).[6]

The Moores licensed a second-run of Fox product for 1936–37 (Ex. 330–A, R. 5387), on January 5, 1937, and licensed second-run again for the 1937–38 and 1938–39 seasons (Exs. 330 B, C, R. 5388–89). The Moores had Paramount product second-run for the 1935–36 season (Def. Ex. D–12), R. 5153), and also licensed the second-run for the 1936–37 season (Ex. 344–A, R. 5414),[7] but Schine bought this product second-run for the Strand for the 1937–38 and 1938–39 seasons (Exs. 344 B, C, R. 5415–16).[8]

618, R. 3952). [The offer of half of the product to the Moores was apparently another result of the letter written by Loew's counsel in the Mt. Vernon situation requesting an explanation as to why that second-run account had been changed for the 1937–38 season (Ex. P. 13, R. 3771).]

[6] The Moores, however, apparently played some of the Metro product second run for the 1938–39 and 1939–40 seasons (R. 684).

[7] The application for this contract is dated July 23, 1936, or more than six months after Paramount had requested the Moores to catch up on their booking (Def. Ex. D–12, R. 5158), and as the Moores were offered all of the Paramount pictures and licensed all, it appears that the Moores were up to date on their bookings when the contract for the 1936–37 season was made.

[8] For the 1937–38 season Schine agreed to play eight pictures at $20.00 and the remaining flat rental pictures at $15.00. The four top pictures were at 35% (without any guarantee) and the contract provided that whatever pictures were played at the Strand first run would be eliminated from the contract. Neither of the Schine contracts specified any period of clearance after first run. The Moore's contract for the 1936–37 season, on the other hand, called for four pictures at

Admission prices at the Ohio had varied considerably prior to the time Schine commenced operations in Van Wert (R. 705–06), and evening admission prices had been reduced from 10 cents and 25 cents to 10 cents and 15 cents (R. 706). In 1935 the Strand charged 10 cents and 20 cents, and the Van Wert had a sliding scale with a top admission at 35 cents. Later, in 1935 or 1936, the top admission at the Van Wert was dropped to 25 cents and the Strand went to 10 cents and 15 cents, and these prices were the same in 1940 (R. 700–01, 703).

The Moores had some informal discussion with Myer Schine and Lazar in the summer of 1935 relative to the possible sale of the Ohio Theatre (R. 685–86, 701–02), and after Bud Silverman went to work for Schine in 1936, he saw the Moores frequently and asked them from time to time whether they had made up their minds (R. 702). The Moores told him that they expected a job for Mr. Moore or a new theatre location (R. 691–92, 702). Their desire to sell their theatre was "due to the situation of pictures in the town" (R. 693). In 1937 (R. 685) Lazar told the Moores that Schine wanted the theatre so that he could raise admission prices and make more money; that it would be the smart thing to sell out; that the Moores would have difficulty getting product and that Schine would have all the first-runs (R. 673–74). In 1937, Silverman

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$35.00 against 35%, six pictures at $20.00 against 30%, fifteen pictures at $15.00 flat, and the balance at $12.50. The clearance period of 90 days after the first run is written into the contract.

approached Carl Moore as a friendly advisor, having formerly worked for the Moores (R. 661), saying that the Schines were tough and the product would be hard to get, and if Moore did not sell, he would probably find himself short of product (R. 702-03). The Moores, however, stood by their proposition that they would not sell unless Mr. Moore got a job or they got another theatre (R. 674, 703) and no sale has eventuated.

Watertown, New York

(Pop. 1940, 32,385—R. 2574)

Vournakis started to operate the Strand Theatre in 1924 and acquired the fee in 1926. He acquired the fee of the Liberty in April 1933 (R. 2173). Schine leased the Avon and the Olympic in January 1927. Fox operated these theatres from 1929 to 1933, when Schine resumed operation. Schine acquired a lease on the Palace in September 1936 (Int. Ans. 17 A, 18, and 23, R. 233) from Graham and Ludlow, who continued to operate the Victoria (R. 2185). These six theatres were all theatres that had been operated there since 1931 (R. 2173, 2180, 2185).

In 1932 four theatres were being operated in Watertown—the Avon and Olympic by Fox, Victoria by Graham and Ludlow, and the Strand by Vournakis (R. 2173). For the 1932–33 season the Strand had the product of Paramount, Warner, and Fox second run, and first run of independent product (R. 2173). For the 1933–34 season, [after Schine had resumed operation of the Avon and Olympic and had demanded second-run product (Exs. 425, 519, R. 3910, 3932)], Vournakis could only get third run from Paramount, Warner and Fox (R. 2174, although he was then operating the Liberty in addition to the Strand (R. 2174).

For the 1934–35 season Vournakis made efforts to re-establish his second run of Fox, Paramount, and Warner product but was advised by each distributor that the second run had been disposed of (R. 2175–77, Exs. 833–835).[1] Vournakis' efforts to negotiate a second-run deal with Universal for the 1934–35 season met with the response that the product was under franchise to the Olympic (R. 2178, Ex. 836). Metro also declined to deal with him because Schine was then using this run (R. 2179, Ex. 837).

Vournakis continued to have third run of Fox for the 1935–36 season (R. 2183, Ex. 840, R. 5558), and he made a contract for the same run for the 1936–37 season dated June 22, 1936 (R. 2183, Ex. 841, R. 5559). After Schine acquired the Palace in September 1936, Grassgreen, Fox branch manager, persuaded Vournakis to release this third run to Schine on the representation that Schine had then bought the product of the other majors, third run, and that he would give Vournakis a better deal for the Strand on fourth run (R. 2184). Vournakis then exchanged his third-run contract for the Strand for a fourth-run contract (R. 2183, 2184–2185, Ex. 842, R. 5560).[2]

[1] However, in the 1934–35 season he did receive a second run on the "B" pictures that played the Olympic first run. On the pictures that played the Olympic second run, he got third run (R. 2180). Schine played the Avon on a straight first-run policy and played both first and second runs at the Olympic (R. 2180).

[2] A comparison of the Vournakis third-run contract (Ex. 841, R. 5559) with the Schine third-run contract (Exs. F-40, F-112, R. 5946, 4965) shows the substantial sacrifice in film

Schine also played three runs of the Paramount and Warner product for the 1936–37 season, the same as with Fox (R. 2185, Exs. 849, 850, R. 5563, 5564). For the 1937–38 season, and thereafter, Schine discontinued his third-run policy and Vournakis went back to third run at the Strand Theatre and fourth run at the Liberty (R. 2186–87).

In the year immediately after Schine took over second run for Fox, Paramount, Warner, Metro, and RKO product (Exs. 343–A, B, R. 5407–08; Ex. 849, R. 5563; Ex. 328–A, R. 5382) the clearance of second over third run was extended from 14 to 60 days on some of the major product (Ex. 343–D; R. 5410; Ex. 852, R. 5566; Ex. 328–B; R. 5383; Ex. 613–A, R. 5434; Ex. R–31, R. 5825), where it remained until after this suit was filed.

On September 20, 1939 pursuant to a telephone call from Myer Schine, who said he had something that would be of benefit (R. 2189–90), Vournakis went to Schine's office and saw George Lynch. Lynch said they were going to do something for him and gave him a memorandum already prepared, whereby Lynch agreed to reduce clearance of 60 days over third run to 30 days on the

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rental that Fox had to make in order to comply with Schine's demand for the third run:

Vournakis Deal:	Schine Deal:
12 at $35.00 (against 35%).	8 at 35% (no guarantee).
12 at $25.00.	Remaining* at $20.00.
16 at $20.00.	
Remaining* at $15.00.	

* Note.—63 pictures were scheduled for release by Fox for the 1936–37 season (Ex. 337, R. 3850).

product of Paramount, Fox, Warner, RKO and United Artists (R. 2190–91, Ex. 845, R. 4376).

About an hour or so later, Vournakis saw Myer Schine, and told him it would be better if they closed up two of the Watertown theatres and Schine said maybe they would do something like that, because there were too many theatres (R. 2190). Schine then asked Vournakis if he wanted to dictate an affidavit for him and when Vournakis said he couldn't dictate (R. 2190), Schine dictated an affidavit bearing the title of this case, which Vournakis signed at Schine's request (R. 2190–91, Ex. 846, R. 4376). The affidavit lauded Schine as a fair competitor and said that Vournakis had no difficulty buying pictures (R. 2192, Ex. 846). As Vournakis said on the stand, he could always buy them when Schine got through with them (R. 2194).

Subsequently, without any request being made by Vournakis to the distributors the Schine protection was cut to 30 days by Warner, Paramount, and United Artists (R. 2191). The Paramount-Schine contract for the Olympic, which is part of the Schine franchise for the 1939–40 and 1940–41 seasons, appears clearly to have been written up originally on the basis of 60 days after third run, but this provision is stricken out and "30 days over third run" substituted therefor (Ex. P–223, R. 5883). The Vournakis third-run contract with Warner for 1939–40 provides for 60 days' clearance; whereas, the 1940–41 contract provides for 30 days (Exs. 852, 853, R. 5566–67). Fox made no reduction (R. 2191, Ex. F–182, R. 6114), and the RKO and Metro clearance in the Schine con-

tracts had been 30 days for the prior seasons (R. 2191).

Before Schine resumed operation of the Avon and Olympic, the Olympic was charging 25 cents and 35 cents, and the Avon 35 cents and 40 cents,[3] and the Strand and Victoria were charging 25 cents[4] (R. 2187). In 1933 the Olympic went to 25 cents all over the house (for adults) (R. 2187, Ex. 343–A, R. 5407), and the Strand and Liberty went to 20 cents (R. 2187). The Olympic went down to 15 cents in the balcony (R. 2187, Ex. 343–B, R. 5408), and after the Palace was taken over by Schine, the Olympic went back to 25 cents, and the Palace charged 15 cents and 20 cents (R. 2188, Ex. 343–A to D, R. 5407–10, Ex. 328–D, R. 5386, Ex. F–40, R. 5946).

About August 29, 1934, Vournakis met Myer Schine at Gloversville at Schine's request (R. 2181–82, 2192–93). Schine wanted to buy the Strand Theatre for $15,000 or make a buying and booking arrangement at $25.00 per week, neither arrangement was made and Schine said to think it over (R. 2181–82, 2192–93). About 1938 Myer Schine and his district manager, Bill Tupper, called on Vournakis at Watertown and Schine again asked him if he was interested in selling out (R. 2185). Some time later Tupper contacted Vournakis and said that Schine had called him up and he offered Vournakis $35,000 for the Liberty; Vournakis said he would sell both houses

[3] These appear to refer to adult evening prices for balcony or orchestra, respectively.

[4] This appears to refer to the adult evening price for orchestra.

for $85,000 (R. 2186, 2194). No deal was made (R. 2186–87), and Watertown remained a competitive situation with Schine playing the first two runs on all major product[8] at the Avon,

[8] By virtue of franchises and master agreements, Schine had first run of Warner product at the Avon or Olympic theatre for the 1937–38, 1938–39, and 1939–40 seasons (Ex. W–4 (28), R. 4483) and second run of that product for the same seasons at the Olympic or Palace (Ex. W–4 (29), R. 4484); second run of RKO product for the Olympic or Avon or Palace for the 1936–37 season (Ex. R–2 (34), R. 4848); first run at the Avon or Olympic or Palace and second run for the Olympic or Palace for the 1938–39, 1939–40, and 1941–42 seasons (Ex. R. 37 (20), R. 4884, R–37 (21), R. 4885); first run of Fox product at the Olympic or Avon theatres and second run at the Olympic for the 1935–36 season (Exs. F–39, R. 5945, F. 40, R. 5946, F. 112, R. 4965, F. 101 (31), R. 6031, F. 101 (32), R. 6032), which arrangement was continued by letter agreement of August 5, 1936, for the 1937–38 and 1938–39 seasons (Ex. F–1, R. 4952); and for the 1939–40, 1940–41, and 1941–42 seasons this product was sold to Schine's Avon or Olympic first run (Ex. F–181, R. 6113) and to the Olympic second run (Ex. F–182, R. 6114) with 120 days' clearance of first over third run (id.); Metro product was sold first run to the Avon or Olympic and second run to the Olympic by the agreement of October 1, 1936 (Ex. 618, R. 3952) for the 1936–37, 1937–38, 1938–39, and 1939–40 seasons; Paramount was sold first-run to the Avon or Olympic, and second run to the Olympic for the 1939–40, 1940–41, and 1941–42 seasons (Ex. P–222, P–223, R. 5882–3); Columbia product was sold for the 1938–39, 1939–40 seasons first run at the Avon or Olympic theatres (Ex. C–102 (42), R. 5017) and second run at the Olympic or Palace theatres (Ex. C–102 (43), R. 5018); the first run for the Avon and Olympic and the second-run deal for the Olympic being repeated for the 1940–41, 1941–42, and 1942–43 seasons (Ex. C–181 (77), R. 5137); (C–181 (78), R. 5138); and Universal was sold first run to the Avon or Olympic for the 1938–39 season (Ex. U–137 (22), R. 4671), second run to the Olympic or Palace

Olympic and Palace, with Vournakis and Graham and Ludlow continuing to operate the Strand, Liberty and Victoria (R. 2186–87).

that season (Ex. U–137 (23), R. 4672); first run to the Avon or Olympic or Palace (Ex. U–207 (22), R. 4746), second run to the Olympic or Palace for the 1939–40, 1940–41, and 1941–42 seasons (Ex. U–207 (23), R. 4747).

Wooster, Ohio

Wooster in 1940 was a town of 11,543 and had experienced an appreciable increase in population since 1930 (R. 2574). In 1932 there were three theatres operating in Wooster; the Wooster, with 1123 seats; the Opera House with 1100 seats, and the Wallace. The defendants acquired as lessee, the Wooster in July 1931, the Wallace in 1932 and the Opera House in November 1932.

In 1938 the Wayne Theatre, a theatre of 679 seats was acquired by the defendants. The Wallace was dismantled and the lease thereon has lapsed. The Opera House when first acquired by the defendants was operated full time as a vaudeville and legitimate theatre house (Ex. 960, R. 5266); then part time to summer of 1936 when it was closed until reopened for part time operation. It was closed again upon the opening of the Wayne Theatre (Int. Ans. 17 (a), 18, 23, p. 15, Supp. Schedule to 18, R. 237, 245).

In 1933 Schine was the successful bidder for lease of the Opera House, leasing it for two years at $1000 a year, with an option for three more years. This lease limited the use of the premises to vaudeville and legitimate productions (Ex. 960, R. 5266).

In 1935 the defendants exercised an option to lease the Opera House for three years at a $2000 yearly rental. The lessee obligated itself to heat the theatre and to furnish janitor service when

theatre was open. This lease permitted its operation as a movie house. (Ex. 961, R. 5273). In 1938 the lessee was the successful bidder and took another lease from the City of Wooster for a term of three years with an option of renewal for five years. The rental fixed was $2000 a year. The repair obligations were more extensive than under the 1935 lease (Ex. 962, R. 5273). The option of renewal has been taken up. (R. 3851.)

Loew gave both of Schine's operating theatres a clearance over towns which had not been subjected to a clearance before that time (Ex. 618, R. 3952).

Wooster has been one of the towns included in franchises and masters agreements in which Schine bought pictures for other towns.

APPENDIX B

The Admission of Which Was Summary of Exhibits Assigned as Error

Ex. No. P–10; offered and received, R. 616, 620

Letter dated February 26, 1935, from H. G. Bissell, branch manager of Columbia at Cleveland, to Rube Jackter, assistant sales manager at Columbia's home office, with a copy to Mr. McConville, Columbia sales supervisor.

Letter recommends approval of attached contract for 1934–35 film product for the Memorial Theatre, Mt. Vernon, Ohio, which is in opposition to Schine. Writer states that the contract is for a greater sum than had been secured from Schine in that theatre the previous years. Bissell writes that in Mr. McConville's letter the latter had stated he disliked selling this account against Schine and then later perhaps having to go back to Schine for business in Mt. Vernon. Bissell writes that if Columbia had taken up the deal when originally submitted, Mr. Long, the exhibitor, would have been up to date on the contract, but unfortunately Columbia had to hold up the deal on account of Schine.

Ex. No. P–12; offered and received, R. 620

Interoffice letter dated February 8, 1937, from A. N. Goodman, branch manager of United Artists at Cleveland, to Paul N. Lazarus, contract manager at United Artists in its home office, with

a copy to Mr. Stearn, district manager of United Artists.

The letter states that the operator of the Memorial Theatre at Mt. Vernon, Ohio, did not want second run, but that United Artists used his need for first run English pictures as a club to sell him second run. The letter states that after Lazarus had informed Goodman that he could not act on first run contracts because Schine might pick up the English pictures later on, he talked to Charlie Stearn and explained to him that Schine did not need the English pictures and that they would probably be booked to play at the Lyric Theatre where not much money would be derived from playing them. Goodman states that subsequently Bill Barron, United Artists salesman, had talked to George Lynch and Lynch had said that Lazarus had contacted him and he was agreeable to having the Memorial get the English pictures; but that later someone contacted Myer Schine, and Schine would not give up the pictures. Goodman asked Lazarus to take the matter up with Mr. Stearn to find out whether Stearn was able to get Schine's permission to sell the English pictures to the Memorial Theatre.

Ex. No. 76; offered and received, R. 2604

Letter of January 14, 1936 on Belpik Theatre Corp. letterhead. Letter signed by Louis Lazar, Schine Theatrical Company. (Lazar was a Schine executive.) Letter is written to the Shelby Globe, Shelby, Ohio, advising them that Schine Theatrical Co. was now expanding its properties in the state; that they had recently acquired a

number of towns in the vicinity of Shelby, and would like to know if a deal could be worked out with respect to theatre building which Lazar had been advised they were the owner of.

Ex. No. 163; offered and received, R. 2605

Interoffice letter dated September 13, 1932 from I. J. Schmertz, branch manager of Fox at Cleveland, to J. Sichelman, administrative assistant to Fox general sales manager, reminding him that Mr. Grainger, vice president in charge of sales, had made a deal with Schine for Bellefontaine, Ohio, covering 30 pictures. The letter states that a wire had been received from George Lynch, asking them to withhold selling any pictures of last year or a second run of this year's product to the opposing house which was just about to open.[1]

Ex. No. 164; offered and received, R. 2606

Interoffice letter of September 19, 1932, from Sidney Sampson, Fox branch manager at Buffalo, to J. Sichelman, administrative assistant to Fox general sales manager, asking to be advised of the status of the Schine deal and reminding him that Sampson's Rochester City proposition gave the circuit preference throughout the city and that he could not deal with the rest of the exhibitors until he knew what the home office would do about accepting the Schine proposition.

Ex. No. 165; offered and received, R. 2605

Interoffice letter of September 24, 1932, from I. J. Schmertz, Fox Cleveland branch manager,

[1] Strictly construed by trial court (R. 3089).

to J. Sichelman, administrative assistant to Fox general sales manager, asking to be advised of what had become of his contracts for the Schine situations in Wooster and Bellefontaine, Ohio. The letter states that Schmertz had just heard from George Lynch and asked him to communicate with Sichelman regarding a change in the deal for Bellefontaine. Schmertz stated he recommended to Lynch that he buy their entire product in view of Lynch's asking them not to sell an opposition theatre, opening in the town, first run, second run, or any other run.

Ex. No. 166; offered and received, R. 2605

Letter of September 27, 1932, from J. Sichelman, administrative assistant to Fox general sales manager, to I. J. Schmertz, Fox branch manager in Cleveland, Ohio. Letter refers to Schmertz's letter of September 24 and states the contracts are being returned. Writer states that regarding Bellefontaine, he believed Lynch, Schine chief film buyer, would see it Schmertz's way and buy 100% in Bellefontaine, in view of the fact that there was an opposition theatre where a subsequent run could be sold.

(Ex. No. 167; offered and received, R. 2605

Letter of October 3, 1932, from I. J. Schmertz, Fox branch manager, to J. Sichelman, administrative assistant to Fox general sales manager. Letter states that he had written two or three letters to George Lynch with reference to purchasing 100% of their product in Bellefontaine. It states that they received several communications from the opposition theatre asking them

to let them have their product which had not been purchased this year or last year for second run. It states that Lynch had been given every opportunity to take 100% of the product as there was no good reason for Schine to get a selective contract of 30 pictures.

Ex. No. 168; offered and received, R. 2605

Letter of October 13, 1932, from I. J. Schmertz, branch manager of Fox at Cleveland, to J. Sichelman, Fox home office official. Letter states that Lynch had said he could not do anything about the 100% deal in Bellefontaine at that time; that they would still get communications from the opposition theatre and that he had not answered the opposition theatre's letters for the reason that he could not answer that they were entirely sold. He said that Lynch had said that when Myer Schine was in New York, he had discussed the proposition with J. R. Grainger, vice president in charge of sales, who promised Schine Fox would not sell the opposition theatre any of their product.

Ex. No. 169; offered and received, R. 2605

Letter of October 21, 1932, from J. Sichelman, administrative assistant to Fox general sales manager, to I. J. Schmertz, Fox branch manager at Cleveland, Ohio, stating that a copy of a letter sent to Myer Schine regarding Bellefontaine was attached. Sichelman advised Schmertz not to sell anyone first or second run until he heard from Sichelman.

Ex. No. 170; offered and received, R. 2605

Letter of October 21, 1932, from J. Sichelman, administrative assistant to the general sales manager of Fox, to Myer Schine. The letter reviews Schine's deal with J. R. Grainger, Fox vice president in charge of sales in Bellefontaine. It states that he was writing Mr. Schmertz to go ahead to sell the balance of the 10 pictures and also second run, but that if Schine decided he wanted the balance of the 10 pictures, to take the matter up with Mr. Schmertz. It states that they had to sell second run to get the revenue.

Ex. No. 171; offered and received, R. 2605

Letter of October 24, 1932, from George V. Lynch, chief film buyer for Schine, to J. Sichelman, administrative assistant to Fox general sales manager. Letter states that Myer Schine had referred to him Sichelman's letter of October 21 regarding Bellefontaine. Letter states that a former employee had opened up an opposition theatre in Bellefontaine and that the only product he had been able to buy had been from independent companies; that this competitor has bucked Schine operation and was selling the product at 10¢ and 15¢ and 5¢ for children, and was flooding the town with passes. It states that a town the size of Bellefontaine was not large enough for a first and second run house; that Schine was charging 40¢ at the Holland Theatre and that he did not want the distributing companies to make it impossible to maintain this price. He asked Sichelman to take the matter up with J. R. Grainger and felt sure Grainger would agree that Fox should not sell second run.

Ex. No. 172; offered and received, R. 2605

Letter of October 24, 1932, from George V. Lynch of Schine to I. J. Schmertz, Fox branch manager in Cleveland, stating he was willing to take the ten additional pictures for Bellefontaine and that Myer Schine wanted Lynch to explain to Schmertz that he would appreciate Schmertz' holding off selling the opposition theatre, that Schmertz if he sold such accounts would merely be encouraging 10 and 15 cent houses. He says that there was no room in a town the size of Bellefontaine for a second run house.

Ex. No. 173; offered and received, R. 2605

Interoffice letter of December 28, 1932, from Sidney Samson, Fox branch manager at Buffalo, N. Y., to J. Sichelman, administrative assistant to general salesmanager of Fox. Letter states that copies of letters received from Schine in connection with the Lockport, New York situation were being attached. He says that these letters ask Fox to transfer the remaining unplayed pictures to be played at the Rialto Theatre; that with the exception of straight percentage pictures on which Fox earnings would be decreased by playing them at the smaller theatre, the Rialto, there would be no objection to the transfer. It states that when the Palace is reopened, the owner would be in the market for pictures, but that in view of Fox's pleasant relations with the Schine organization "and the fact that we serve them throughout their circuit" he did not believe there would be any objection to serving Schine in Lockport at the Rialto.

Ex. No. 176; offered and received, R. 2607

Letter of July 9, 1934, from M. Grassgreen, Fox branch manager at Albany, to T. H. Bailey, Fox district sales manager, stating that George Rosenbaum had asked for first run at Carthage and that he had told him that first run had been sold to Schine; that Rosenbaum had then asked for second run, but that Grassgreen, in view of his conversation with George Lynch, chief film buyer for Schine, when he was in Gloversville, was under the understanding that he was not going to sell Rosenbaum second run in Carthage.

Ex. No. 178; offered and received, R. 2607

Letter of August 20, 1934, from M. Grassgreen, Fox branch manager at Albany, to T. H. Bailey, Fox district manager, stating that he had found that most of the major companies supply the opposition theatre in Carthage first and second run pictures, first run pictures being of course those that were passed up by Schine. He asked whether it was advisable to contact George Lynch, Schine's chief film buyer, in order to get his reaction.

Ex. No. 179; offered and received, R. 2607

Letter of August 21, 1934, from Tom H. Bailey, district sales manager of Fox, to Moe Grassgreen, branch manager at Albany. Bailey thought it was all right for Grassgreen to contact Rosenbaum if other companies were selling him last year's product second run in Carthage.

Ex. No. 190; offered and received, R. 2603

Letter of December 8, 1936, from J. J. Grady, Fox branch manager, to L. Merrenbloom, Kentucky Theatre, Corbin, Ky. Letter states that the surest way to keep opposition out of Merrenbloom's town was to have a long time franchise.

Ex. No. 200; offered and received, R. 2241

Letter of July 10, 1937, from J. J. Grady, Fox Cincinnati branch manager, to William Sussman, Fox Eastern Division sales manager, copy for George E. Roberts, Fox district manager, stating that Shine's first run Lexington contracts provided for specified minimum admission prices and that Schine was advertising their shows at prices below these admission prices. Grady asked that Sussman rectify this condition.

Ex. No. 201; offered and received, R. 2241

Letter of July 13, 1937, from William Sussman, Fox Eastern Division sales manager, to Myer Schine, copy to J. J. Grady, Fox Cincinnati branch manager, advising him of Schine's advertising in Lexington at prices below minimum admission prices fixed in Schine's Fox contracts and asking to be advised what Schine intended to do in this regard.

Ex. No. 202; offered and received, R. 2241

Letter from J. Myer Schine to William Sussman, Fox Eastern sales manager, received July 20, acknowledging receipt of Exhibit 201, stating that certain modifications in their admissions had

been made for the summer, which were essential and proved to be beneficial, and that Schine would be glad to discuss the matter with Sussman when he would see him at an early date.

Ex. 216; offered and received, R. 2603

Letter of November 8, 1938, from G. V. Lynch, chief Schine film buyer, to J. J. Grady, Fox branch manager at Cincinnati, Ohio. Letter states that Schine was arranging to build a second theatre at Paris, Kentucky, and would like Fox to hold their product for second run for Schine's use.

Ex. 218; offered and received, R. 2603

Letter of November 17, 1938, from William Sussman, Fox Eastern Division manager, to J. J. Grady, Fox Cincinnati branch manager, copy for G. A. Roberts, Fox district sales manager, stating that Schine desired to buy second run in Paris and that he had agreed.

Ex. No. 226; offered and received, R. 2606

Letter of June 26, 1939, unsigned but as appears from Exhibit 227, written by William Sussman, Eastern division manager of Fox, to Sidney Samson, Fox branch manager at Buffalo. Sussman reviews Schine contracts. He states that as to Cortland, he notes that the clearance had been changed by adding the towns of Tulley and Groton, which were not in the previous year's schedule. He notes that as to Lockport, clearance was given to Newfane, but that they had no record of any theatre in that town. At the Salamanca,

he observes that clearance is given over Little Valley, but they have no record of a theatre in Little Valley.

Ex. No. 227; offered and received, R. 2606

Interoffice letter of June 27, 1939 from Sidney Samson, Fox Buffalo branch manager, to William Sussman, Fox Eastern Division manager, copy to G. A. Roberts, Fox district sales manager. Samson refers to Sussman's letter (Exhibit 226). He states that Tully and Groton were added to the Cortland clearance; that there was no theatre in Tully; that Cortland had had a clearance over Groton for the previous two years. As to Lockport, he says Newfane has no theatre but it is adjacent to Lockport and it is possible that a theatre might go into this town. As to Salamanca, there is no theatre in Little Valley, but it is adjacent to Salamanca and the high school occasionally runs a show.

Ex. No. 228; offered and received, R. 2606

Letter of June 27, 1939, from William Sussman, Eastern Division manager of Fox, to M. Grassgreen, Albany branch manager of Fox, copy to T. H. Bailey, Fox district sales manager, reviewing Schine contracts. With reference to Glens Falls second run, he notes that the clearance had been changed by providing for 60 days over third run and that 60 days' clearance there would seem to be excessive. With reference to Ilion, he notes that clearance is given over Mohawk, although their records do not indicate any theatre in Mohawk. With reference to Malone, he says

that there is clearance over Brushton, although they have no record of a theatre there, and that the record provides for 60 days over second run. He says that they do not have a second run in Malone, and furthermore 60 days over second run seems excessive. With respect to Norwich, he notes that the clearance mentions Mt. Upton, although it was not in the previous deal, nor do they have a record of a theatre there. With respect to Oneonta, he notes that the clearance has been changed by the addition of the towns of Cherry Valley and Worcester. As to Watertown, he notes that the clearance covers Dexter, there they do not have a record of any theatre.

Ex. No. 229; offered and received, R. 2606[2]

Letter of June 30, 1939, from M. Grassgreen, Fox Albany branch manager, to William Sussman, Fox Eastern division manager, copy to Tom H. Bailey, Fox district sales manager. With respect to Glens Falls second run clearance, he states that previous contracts with Schine always provided for 60 days' clearance over third run, and while it may be excessive, that clearance had been set up and George Lynch insisted in carrying it through for the future. As to the clearance of Ilion over Mohawk, he states that while there was no theatre in Lockport, contracts always provided for clearance over this situation and Schine insisted that the clearance over Mohawk be included in the contract the same as previous years, in view of the way theatres were springing up in small towns. He states there is

[2] Strictly construed by the trial court (R. 3089).

no theatre in Brushton, but Schine's contracts always carry clearance over it. As to the clearance over third run in Malone, Schine set up its own subsequent run of 60 days, which is the same clearance they take and get over independent subsequent runs. The previous year's contracts did not provide for Mt. Upton in favor of Norwich, but in previous years there was such provision, and if a theatre should open there, Schine was entitled to 30 days' clearance. While the previous year's contract did not provide for clearance for Oneonta over Cherry Valley and Worcester, Schine has always enjoyed clearance over these situations, and while the previous years' contracts provided for 30 days' clearance over first run in Oneonta, Schine insisted on setting up 60 day clearances. As to Watertown's clearance over Dexter, while there was no theatre there, one did operate in the silent days, which also applies to Philadelphia and Theresa, and Schine's contracts always carried clearance over these situations.

Ex. No. 230; offered and received, R. 2606

Letter of June 30, 1939, from William Sussman, Eastern division manager of Fox to Sidney Samson, Fox Buffalo branch manager, copy to G. A. Roberts, Fox district sales manager. Letter states that as far as clearances are concerned, Samson's explanations for Courtland, Lockport, and Salamanca seem to be reasonable.

Ex. No. 236; offered and received, R. 2606

Interoffice letter of February 13, 1940, from William Sussman, Fox Eastern division sales

manager, to Jack Bloom, in charge of Fox contract department, copy to S. Samson, Fox Buffalo branch manager, stating that it has been decided that East Rochester, Fairport, and the Palace Theatre at Syracuse are a part of the three year franchise with Schine.

Ex. No. 243; offered and received, R. 2605

Telegram of September 10, 1942, from Lynch, chief film buyer of Schine, to Paramount Publix Corp., Columbus, Ohio, asking that 1931, 1932, and 1933 product be held for him second run, Bellefontaine.

Ex. No. 259; offered and received, R. 2604

Letter of September 30, 1937, from Harry Schwartz, independent theatre operator of the Opera House in Lexington, Kentucky, to Paramount at Cincinnati, Ohio, attention J. Oulahan, Paramount Cincinnati branch manager, insisting upon a reduction on some of Paramount's product, because of low admission prices at which Schine was playing first run and second run product at the Ben Ali and Strand Theatres in Lexington.

Ex. No. 273; offered and received, R. 2603

Paramount cancellation of contract for Paris, Kentucky, dated 3/4/40, relating to Schine's Paris Theatre, with notation at bottom that at the time the deal was sold, Schine contemplated second run in Paris and did not go through with it.

Ex. No. 282; offered and received, R. 2606

Letter of February 23, 1934, to P. N. Lazarus, contract manager of United Artists, from J. J. Kaplan, United Artists branch manager at Buffalo, referring to second run contracts in Lockport, New York, stating that their agreement with Schine was that the second runs were to play in the Class B house, as well as any pictures which Schine could not play at the Class A first run, in the latter case the second run contract being cancelled out. Letter stated that the two pictures mentioned in the letter were played at Schine's Class B house first run and then they were able to resell the second run to the opposition house at more money.

Ex. No. 283; offered and received, R. 2606

United Artists Contract Change Report dated February 23, 1934, relating to Schine's Hi-Art Theatre in Lockport, New York, containing the same comment as in Exhibit 282.

Ex. No. 286; offered and received, R. 2606

Interoffice letter of October 8, 1934, from Jack Kaplan, United Artists Buffalo branch manager, to Paul Lazarus, United Artists home office official. Referring to the Watertown, New York situation, he states that up to the last season they had sold the Avon or Olympic Theatres first run and then the Strand second run, but that last year Schine also made a deal for second run at the Olympic because there was an additional theatre opening up, the Palace, and to protect his first

run, Schine felt if he bought the pictures second run also, he could protect himself by getting longer clearances. After selling Schine both runs, they sold the Strand Theatre third run, although this had always been the second run account. They got from him the same prices they had gotten for second run in prior years. The exhibitor found his grosses were about one half of what they had been and would not play the pictures until the prices were adjusted. Kaplan said that the Strand Theatre was paying more for third run than Schine paid for second run. Kaplan recommended a reduction of 25% in price charged the independent exhibitor.

Ex. No. 288; offered and received, R. 2606

Interoffice letter of May 7, 1935, from Jack Kaplan, United Artists Buffalo branch manager, to S. W. McGrath, United Artists assistant contract manager, re Palace Theatre in Lockport, New York, stating that unplayed pictures had been sold to the Schine opposition, which was the best theatre in the town, and recommending a deal on three pictures for this theatre. Notation that the contracts as submitted were approved.

Ex. No. 292; offered and received, R. 2606

Interoffice letter of February 5, 1936, from S. W. McGrath, United Artists assistant contract manager, to Nat Beier, United Artists salesman, stating that with respect to the Capital Theatre in Ilion, New York, it was necessary to hold the contracts and before considering the deal "we want to be absolutely certain as to the clearance

following 10 days after Herkimer"; that they did not want any difficulty with Schine insofar as clearance was concerned, and therefore wanted to be sure that the clearance as submitted in the contracts was satisfactory to Schine.

Ex. No. 300; offered and received, R. 2604

Interoffice letter of 9/16/37, from J. A. Bykowski, office manager of United Artists Buffalo exchange, to S. Lehman, United Artists branch manager at Buffalo. Letter reviews Schine's clearances which Bykowski regarded as unfair and which he wrote should be altered. Refers particularly to clearance of Geneva over Lyons; Newark over Clyde, Lyons, and Palmyra; Oswego over Fulton; Salamanca over Franklinville. Exhibit contains Schine's clearances for towns included within the area covered by United Artists Buffalo exchange.

Ex. No. 307; offered and received, R. 2604

Interoffice letter of December 7, 1938, from P. N. Lazarus, contract manager of United Artists, to M. Stahl, Cincinnati branch manager of United Artists, enumerating certain specific clauses to apply to the Schine deal for 1938–39, including the statement that although playing time was stipulated on the percentage contracts, United Artists had incorporated the following—"playing time to be mutually agreed upon." At the bottom of the letter, it is stated that a copy is for Mr. Gold, United Artists Eastern Division sales manager, and many other named United Artists officers.

Ex. No. 308; offered and received, R. 2606

Letter of March 18, 1939, from J. A. Bykowski, office manager of United Artists, to W. Kraemer, Schine Circuit, Inc., Gloversville, New York. Letter confirms dates on a picture pursuant to booking request by Kraemer. He states that they have always had trouble with subsequent runs in Watertown, because of the fact that the Schines held out for second run booking 60 days after first run and insisted on 60 days' protection over third run, and that they could not wait five or six months before making a picture available for subsequent runs if that were to be the availability on the dates given them by Schine. He was therefore making pictures available to third run 120 days after first run Watertown, which he thought was reasonable.

Ex. No. 310; offered and received, R. 2604

Letter of December 15, 1939, signed by Frances Turner, secretary to Mr. B. M. Stearn (Stearn was United Artists district manager) to Edward Mullen of the New York Exchange, attaching a copy of a clearance schedule for the Schine circuit covering the New York territory for 1939–40.

Ex. No. 318; offered and received, R. 2604

Letter of December 16, 1940, from George V. Lynch, chief film buyer for Schine, to S. Lehman, United Artists branch manager at Buffalo, calling his attention to United Artists' allowing a new theatre in Sodus to play a picture ahead

of Newark and asserting that Newark, which was charging a greater admission price, should be allowed to play pictures ahead of a situation charging a lesser admission price.

Ex. No. 319; offered and received, R. 2604

Letter of December 18, 1940, from Syd Lehman, United Artists Buffalo branch sales manager, to George Lynch, chief Schine film buyer, referring to Exhibit 318 and stating that although Lynch had never asked for clearance over Sodus in the past, they would be glad to give it to him, but thought he would also have to ask for clearance over Wolcott, due to the fact that there was no clearance to or from either of these towns. He went on to say, "Therefore, in the future, we will grant you 14 days, or whatever clearance you see fit to take in towns like Palmyra, etc., in that locality."

Ex. No. 321; offered and received, R. 2606

Letter of January 21, 1937, from branch sales manager of United Artists to Charles Stern, United Artists branch manager in New York, listing pictures he would like to sell in Mt. Vernon and Van Wert to Schine's opposition, stating that as regards Van Wert, he was not so much concerned, since he could sell a second run there, without giving the opposition any first run pictures, but as to Mt. Vernon, the only way they could get a second run deal was if they gave the exhibitor first run pictures. It goes on to say that he was sure George Lynch, Schine chief film buyer, would cooperate with Stern in allowing United Artists

to sell those pictures to the opposition in Mt. Vernon. He refers to these pictures as pictures left out of the Schine deal.

He asked for Stern's advice, since he was holding both first and second run pending Stern's advice that with Lynch's approval they would sell those pictures in Mt. Vernon.

Ex. No. 322; offered and received, R. 2606

Letter of February 8, 1937, from Charles Stern, United Artists New York branch manager, to A. M. Goodman, United Artists Cleveland branch manager, referring to Exhibit 318 and stating that he had tried to contact George Lynch, but the latter was away on a vacation and he would follow it up when Lynch returned.

Ex. No. 323; offered and received, R. 2606

Letter of March 8, 1937, from Bert N. Stearn, United Artists sales division manager, to Charles Stern, United Artists branch manager, referring to the Mt. Vernon situation. Letter states that certain specified pictures had been omitted from the Schine deal; that the Cleveland office had been able to sell the opposition second run, using as an inducement the few pictures Schine did not buy first run which Schine's opposition did buy; states that the prices secured were way ahead of the prices they had from Schine; that the exhibitor would not take second run until they approved selling the specified pictures first run to him. He asked that Mr. Stern see what he could do about this matter, because he was more intimate with Schine than he was.

Ex. No. 338; offered and received, R. 2605

Letter of October 24, 1932, from G. W. Lynch, chief film buyer for Schine, to Jack Sichelman, administrative assistant to Fox general sales manager. He refers to a letter written by Sichelman respecting Bellefontaine. He states that the man who had opened up the opposition theatre had formerly been an employee of theirs; that no major company had sold the opposition any product; that the opposition was bucking chain operation and was selling the product for 10 and 15 cents and flooding the town with passes; that Bellefontaine was not large enough to support a first and second run; and urged that a second run not be sold. He states that he has written to Mr. Schmertz, Fox branch manager, advising him that Schine would take the remaining pictures they had not bought first run and asked him not to sell the second run house.

Ex. No. 356; offered and received, R. 2603

Letter of May 8, 1934, from G. V. Lynch, chief film buyer for Schine, to Dave Miller, Universal district sales manager. Lynch states that although Schine's contract with Universal requires him to play 20 pictures second run at the Capital Theatre in Oswego, the deal sheet states that Schine was to repeat at the Capital Theatre second run all pictures which were played first run at the Strand. Also a reply from Miller to Lynch dated May 10, 1934, stating that the contract controlled and that in view of the impending complaints being brought against him by opposition exhibitors in just such situations as that,

Miller suggested that Lynch follow through on the terms of the contract rather than allow the record to stand on the basis of Schine's deal sheets with another Universal representative "which merely allows you to hold up the playing of all these pictures in these situations without any definite commitment."

Ex. No. 361; offered and received, R. 2605

Letter of November 28, 1934, from Dave Miller, district sales manager of Universal, to Myer Schine, labeled "personal" and stating that in accordance with telephone conversation regarding Perry, New York, he was submitting grosses of pictures which had played at the theatre of the exhibitor in that town and was giving other data with respect to the theatre possibilities of the town of Perry.

Ex. No. 363; offered and received, R. 2603

Universal comparative price schedule, dated 2/26/35, relating to second and third run for the Plaza Theatre in Corning. This schedule contains the statement that it is agreed that features are to be third run in Corning to follow the Schine houses Fox and State or a Schine house in the Palace and that Buck Jones westerns are to be second run.

Ex. No. 366; offered and received, R. 2603

Letter of July 16, 1935, from Nate Sauber, Universal branch manager, to Schimel, Universal home office counsel regarding the Reliance Theatres, Inc. Letter states that copies of corre-

spondence and contracts were attached and that they had pointed out in their letter to Reliance Theatres that Universal had a franchise with Schine which prevented Universal from negotiating deals with Reliance until Schine eliminated pictures. The letter lists pictures they had sold to Reliance. The letter states that the financial responsibility of Reliance is good and states that Universal apparently was interested only in the sale and delivery of product after Schine's operations. A notation on the bottom indicates that copies of this letter were sent to F. J. McCarthy, Universal Eastern division sales manager, and W. B. Kraemer, Universal contract manager.

Ex. No. 367; offered and received, R. 2603

Letter of September 11, 1935, from G. V. Lynch, chief film buyer of Schine, to Nate Sauber, Universal branch manager at Buffalo. Letter states that Lynch understands someone has leased the Opera House in Phelps which is operated under an admission price of 10 and 15 cents. Lynch asks that this town be held back 30 days after Geneva, and states that Schine is charging 40¢ in Geneva.

Ex. No. 368; offered and received, R. 2604

Letter of September 14, 1935, from Nate Sauber, Universal branch manager at Buffalo, to George V. Lynch, chief film buyer of Schine. Letter refers to Exhibit 367 and states that if they sell Phelps, they would be glad to comply with Lynch's wish to keep this town 30 days after Geneva.

Ex. No. 369; offered and received, R. 2606

Letter of September 23, 1935, from P. T. Dana, Universal branch manager in Buffalo, to Dave Miller, Universal district sales manager at Cleveland, referring to the conversation Dana had with George Lynch, Schine chief film buyer with respect to Wooster, Bucyrus, and Van Wert. He states that with respect to Van Wert, Lynch wanted Miller to get out of Universal second run and resell first run, as he does not want this other theatre to establish a second run policy in the town; that Lynch claimed that he had spoken to Mr. McCarthy about it and McCarthy had agreed that it would be best to let the other fellow play Universal pictures first run and Lynch was afraid that if he allowed Universal to sell this other theatre second run, the other companies would follow and establish a second run in the town.

Ex. No. 370; offered and received, R. 2606

Unsigned letter of September 23, 1935, from P. T. Dana, Universal branch manager at Albany, to Frank McCarthy, Universal Eastern sales manager, attaching sheets showing short product commitment for Schine, stating that it was not a very healthy commitment, and that George Lynch gave the following reasons for not buying shorts in the towns left out. (The reasons are listed.) The letter states that in Van Wert, Dave Miller, Universal general sale manager, advises that upon the suggestion of Mr. Grainger, Universal general sales manager, he took away the first run from the opposition and sold them a second run.

Lynch does not want a second run policy to prevail and has promises from other major companies that they would not sell second run[3] and wants Dave Miller to reinstate first run in opposition theatres.

Ex. No. 374; offered and received, R. 2604

Letter of October 28, 1936, from P. T. Dana, Universal Albany branch manager, to Paul Krieger, Universal branch manager at Cincinnati, stating that contracts covering the Schine circuit at Piqua, Athens, and Delaware, Ohio were enclosed, and that if the clearances stated in the contracts were not what the other major companies granted Schine, they were then to take the matter up directly with George Lynch in Gloversville. Dana states that it was his understanding with Lynch that the clearances were the same as granted to him by the major companies. Underneath the signature appears the following: 90 days ahead of Athens, 30 days ahead of Glouster and Nelsonville, Logan, and Pomeroy. Underneath Logan and Pomeroy appears "X'd out.".

Ex. No. 381; offered and received, R. 2604

Letter of June 22, 1937, from F. J. A. McCarthy, Universal Eastern sales manager, to Paul Krieger, Universal Cincinnati branch manager, stating that in any situation that Schine takes over where the terms of the former exhibitors' contract were in excess of what Schine pays as a circuit, Mr. Grainger, Universal general sales manager, has agreed to changing them to meet

[3] Stricken by trial court (R. 3089).

the terms of the Schine deal. It will be, therefore, necessary to resell "My Man Godfrey" in Paris and Richmond, Kentucky at 30% of the gross. Notation at bottom: Copy for Mr. Lynch.

Ex. No. 384; offered and received, R. 2604

Letter of January 4, 1938, from Dave Miller, district sales manager of Universal, to George Lynch, chief Schine film buyer, reminding Lynch that nothing had been heard from him regarding taking the 1937–38 product in Medina, Ohio; that the new opposition theatre which had opened in Medina had made numerous requests for the product. Letter states that the product had been held for Lynch for the past 6 months and that his attitude in this particular instance was most unfair. Letter states that unless he hears from Lynch by the end of this week, he will proceed to make a deal with the opposition house. Notation: Copy to F. J. A. McCarthy, Universal Eastern sales manager.

Ex. No. 385; offered and received, R. 2605

Letter of January 21, 1938, from Dave Miller, Universal district sales manager, to F. J. A. McCarthy, Universal Eastern sales manager. It is stated that after receiving a letter from Fine and Essick, asking that Universal hold their product for them in Medina, Miller had received a letter from George Lynch that Schine had taken over a theatre in Medina and would like to make a deal for their product. Miller states that he sent a copy of the letter to J. B. Grainger, Universal general sales manager, and that Miller acknowl-

edged the letter and asked Lynch if he would be in Cleveland or whether Miller should come to Gloversville to arrange the deal; that later the Schine deal was received with no mention of Medina and that Miller had written several times to the home office about Medina, but had gotten no action from Schine; that he had written to Lynch (Exhibit 384), and not hearing from him had called him on the phone, and Lynch had said it would be OK for Universal to sell their product in Medina, this permission being given 10 months after he had asked us to hold it.

Ex. No. 386; offered and received, R. 2605

Letter of January 27, 1938, from F. J. A. McCarthy, Universal Eastern sales manager, to George Lynch, chief film buyer of Schine, reviewing the Medina situation and stating that Schine in effect had been persistently endeavoring to buy Universal product from the Cleveland office without success, because of Lynch's letter to Miller; that Lynch had told Miller that he could sell Universal products in Medina 10 months after Lynch had requested them to hold the product and that Miller was put in a position of being unable to close the deal with Schine's opposition because of Universal's previous refusal to negotiate.

Ex. No. 387; offered and received, R. 2604

Letter of January 28, 1938, from Nate Sauber, branch manager of Universal, to G. V. Lynch, chief film buyer for Schine, stating that it had been brought to his attention that various major

companies were serving Waterloo within the 30 day period after the Seneca Falls showing and that they would want to be extended the same consideration. Letter states that the type of clearance and availability on their Waterloo contract provides that we serve them within the 30 day period if any other major distributor does so. He states that it has been generally understood with Lynch that Lynch would grant equal consideration to Sauber if any differences were made for the clearance set up. The letter states that for obvious reasons, he would prefer to discuss the matter with Lynch in person, but did not have an opportunity to be in Gloversville at an early date.

Ex. No. 388; offered and received, R. 2605

Letter of February 1, 1938, from W. B. Kraemer, on behalf of the Schine Circuit, Inc., to F. J. A. McCarthy, Universal Eastern sales manager, stating that George Lynch was ill and therefore no definite reply could be given regarding Medina.

Ex. No. 389; ordered and received, R. 2916

Letter of February 7, 1938, from P. T. Dana, Universal Albany branch manager, to A. J. Herman, Universal district manager, with copy to F. J. A. McCarthy, Universal Eastern sales manager. Letter states he saw Louis Schine with reference to clearances over the Smalley circuit and that Mr. Schine absolutely refused to grant Universal the privilege of serving pictures other than at clearances under which their contracts

were taken. He states that Mr. Schine warned that if they served Smalley, he would stop booking their pictures. He states that he had wired Smalley that he could not accept contracts as written.

Ex. No. 390; offered and received, R. 2604

Letter of February 15, 1938, from Schine Circuit, Inc., by L. Goldstein to Nate Sauber, Universal branch manager at Buffalo, stating that with respect to Exhibit 387, they could not permit Waterloo to be served within the 30-day clearance period after Seneca Falls.

Ex. No. 391; offered and received, R. 2911

Letter of November 14, 1938, from Paul Baron, acting branch manager of Universal at Washington, to A. J. Herman, Universal district sales manager, referring to deal made by Dave Miller, a district sales manager of Universal, with Schine for the Arcade Theatre in Salisbury, and stating it was lousy in comparison to their former deal. He states that he had been informed that George Lynch, chief film buyer of Schine, was arranging with Mr. Scully, Universal general sales manager, to wash out all the existing deals they had in the towns they had taken over.

Ex. No. 392; offered and received, R. 2911

Letter of December 14, 1938, from F. J. A. McCarthy, Universal Eastern sales manager, to Dave Miller, Universal district manager, stating that Baron, a Universal salesman, had written to them regarding the Schine contract for Salis-

bury, Maryland, and that George Lynch had advised him he was arranging with Mr. Scully to wash out the existing deals in the Washington territory. He asked what information Miller could give Baron as to their understanding of what was to be done on the old product.

Ex. No. 393; offered and received, R. 2603

Universal cancellation of authorization of contract dated 12/15/38, referring to the Roxy Theatre at Corbin, Kentucky and G. Scott as exhibitor. Enumerates the deal cancelled. Contains a notation that this deal intended for a new theatre to be built in Corbin by Mr. Scott, and in the meantime Schine acquired other theatres in the town and made a deal with Mr. Scott whereby the new theatre would not be built, and Mr. Miller negotiated a new contract with Schine. Cancellation contains approval signatures of Krieger, branch manager, and Scully, Universal sales manager.

Ex. No. 396; offered and received, R. 2606

Letter of May 23, 1939, from John J. Scully, Universal branch manager at Buffalo, to F. J. A. McCarthy, Eastern sales manager at Universal, with copies to W. A. Scully, Universal general sales manager, and Daye Miller, Universal district manager. Letter acknowledges receipt of McCarthy's letter asking for information to assist him in negotiating with the Schine circuit. The writer suggests the clearances to be set up for Schine theatres in Buffalo. With respect to the Madison and Monroe theatres in Rochester, the writer states that since Schine now operates, if

they wish to come within Riviera's 21 day clearance, this is satisfactory. Also a letter of May 19, 1939, from F. J. A. McCarthy to J. J. Scully, asking him to send him all the information he might have that might assist in their negotiations with the Schine circuit on a deal for the new product. Notation: Same letter to Albany, Cincinnati, and Cleveland.

Ex. No. 397; offered and received, R. 2604

Letter of June 8, 1939, from B. B. Kreisler, Universal branch manager, in Washington, D. C., to F. J. A. McCarthy, Universal Eastern Division manager, with copies to W. A. Scully, Universal general sales manager, and A. J. Herman, Eastern sales manager. Letter states that they had made the chart for the Schine circuit deal and had submitted it to McCarthy the preceding day. Letter called attention to the fact that several of the majors had better deals in Salisbury, Cambridge, and Easton, and Universal was entitled to better terms in Hurlock and Federalsburg, as well as in the other mentioned towns. He states that their blind checking records substantiate the fact that the circuit was buying their product at peanut prices, and that since Schine had invaded the Eastern shore, the business of all surrounding town situations had been greatly depleted. He complains of the circuit's policy of bank nights and double billings.

Ex. No. 409; offered and received, R. 2916

Letter of September 23, 1935, from P. T. Dana, Universal branch manager, to Frank McCarthy,

Universal Eastern sales manager, stating that Lynch had insisted upon having reversion figures inserted on all the contracts and that figures accepted were less than those set up by Fox.

Ex. No. 412; offered and received, R. 2604

Letter of September 10, 1932, from George Lynch, chief film buyer for Schine, to Jack E. Flynn, Loew district sales manager, informing him that a former employee of theirs had leased the Opera House in Bellefontaine and had spread propaganda that Schine's admission prices were too high. Lynch stated that he wanted Flynn to refrain from selling him any pictures whatsoever; that if their Cincinnati office sold him any pictures, they would be encouraging unfair competition and would be hurting the film rentals they were receiving from Schine's theatres.

Ex. No. 413; offered and received, R. 2604

Letter of September 12, 1932, unsigned, but with initials J. E. F. and notation "copy for W. F. Rogers", Loew Eastern sales manager, to George V. Lynch, Schine chief film buyer, referring to Exhibit 412 and stating that Loew did not feel that selling a second run account in Bellefontaine would be to their best interest, and would inform the opposition should they be approached by him.

Ex. No. 424; offered and received, R. 2882

Letter of October 13, 1933, from E. K. O'Shea, Loew Buffalo branch manager, to W. F. Rodgers, Loew Eastern sales manager, stating that in

Seneca Falls, despite Schine's increasing its clearance from 10 days to 30 days for Geneva over Seneca Falls, he got the same amount on flat rental pictures. Notation: Copy to J. E. Flynn, Loew District sales manager.

Ex. No. 425; offered and received, R. 2604

Letter of October 21, 1933, from G. V. Lynch, chief film buyer for Schine, to Jack Flynn, Loew district manager, listing a number of theatres in towns in which Schine would use Loew product second run and stating that if there were any other towns where Flynn believed he could sell a second run, Lynch would appreciate if Flynn would take the matter up with Lynch first before selling.

Ex. No. 426; offered and received, R. 2604

Interoffice letter of January 4, 1934, from Ralph Pielow, Albany branch manager of Loew, to J. E. Flynn, Loew district manager, stating that he had just returned from Gloversville, where he had talked with Myer and Louis Schine and George Lynch. He said they would not agree to the second run contracts in Watertown and Glens Falls, because they wanted the right to play percentage pictures on the days they chose and still insisted on 60 days' clearance over third runs and wanted the privilege of playing flat rentals 3 days when they so desired. Pielow said that Myer Schine discussed with him the reasons why Loew should not sell second runs in towns under 7,500, but that he believed Schine did not want them to sell these situations because Schine was

against their selling third runs, and rather than have them selling third run, Schine would want Loew to pass up a second run.

Ex. No. 430; offered and received, R. 2605

Letter of August 1, 1935, from Ralph Pielow, Loew Albany branch manager, to J. E. Flynn, Loew district manager, stating that Lynch has signed the Schine contracts but was holding the contracts for two theatres in Buffalo because he wanted to discuss the clearance for them with Mr. O'Shea, a Loew branch manager. Pielow said that in some situations he felt the clearance asked was unfair and told him that where Schine had clearances over other towns, it would be expected that the pictures would be played as soon as they became available to Schine and that if they were not so played, Loew would have to reduce the clearance.

Ex. No. 435; offered and received, R. 2550

Letter of September 27, 1935, from G. V. Lynch, chief film buyer for Schine, to Ralph Pielow, Loew Albany branch manager, stating that he had not yet received an answer to letters of his regarding protection in the Ogdensburg district to remain 30 days over Canton until they saw Mr. Flynn.

Ex. No. 441; offered and received, R. 2882

Unsigned letter of February 7, 1936, with dictator's initials WFR, copy to Flynn, Loew district sales manager, and O'Shea, Loew Buffalo branch manager, to G. V. Lynch, chief film

buyer for Schine. Rodgers asks that the clearance matter affecting Oswego and Fulton be taken up with Myer Schine in Florida or be decided by Louis Schine and Lynch. He states that although Loew is bound to a 30 day clearance for Schine in Oswego over Fulton, he believes the clearance is excessive, and that a 10 or 14 day clearance at the outset was sufficient.

Ex. No. 444; offered and received, R. 2605

Letter of June 15, 1936, from E. K. O'Shea, Loew Buffalo branch manager, to J. E. Flynn, Loew district manager, with copies to Mr. Connors, Loew Eastern and Southern sales manager, and Mr. Pielow, Albany branch manager. He complains about the difficulty of getting extended playing time because of Schine's bank nights. He states that Schine wants additional flat rental pictures in those situations and they are not willing to play percentage pictures on the nights when they have bank night.

Ex. No. 455; offered and received, R. 2249

Letter of August 28, 1937, without signature, dictator's initials EK O'S, which are those of Mr. O'Shea, Loew branch manager at Buffalo, with copy for T. J. Connors, Loew Eastern and Southern sales manager. Letter is to Loew's branch manager in Cincinnati, E. M. Booth. Letter asks Booth to check a statement by George Lynch, chief film buyer for Schine, that Loew was selling the Opera House in Lexington at a 10¢ adult night admission price.

Ex. No. 456; offered and received, R. 2607

Letter of August 30, 1937, from E. M. Booth, Loew branch manager at Cincinnati, to E. K. O'Shea of Loew. Letter refers to Exhibit 455 and states that Lynch was in error and that the admission at the Opera House at night was 16¢. Letter states that the situation in Lexington was very bad and that Schine's policy was materially affecting the surrounding towns. He lists the admission prices of Schine theatres in Lexington. He states that when they sold the independent Opera House fourth run, Schine was not operating under this policy, and that that policy had made it difficult for the Opera House to continue under the contract. The Opera House was playing fourth run after Schine double billed the three other theatres on a comparable admission price.

Ex. No. 457; offered and received, R. 2249

Letter of September 1, 1937, from E. K. O'Shea, Loew sales executive, to E. M. Booth, Loew branch manager at Cincinnati, referring to Ex. 456 and stating that Loew would expect the independent operator to conform to the prices on his contract and that two wrongs do not make a right.

Ex. No. 459; offered and received, R. 2607

Letter of November 1, 1937, from E. M. Booth, Loew branch manager at Cincinnati, to E. K. O'Shea, Loew sales executive, with copy to T. J. Connors, Loew's Eastern and Southern sales man-

ager, comparing the independent's admission prices with Schine's in Lexington, Kentucky, and stating that because of Schine's policy of oppression, adjustments were made with respect to the independent's contract and recommends approval of attached alterations to that contract.

Ex. No. 476; offered and received, R. 2607

Letter of July 13, 1938, from G. V. Lynch, Schine chief film buyer, to Ralph Maw, Loew Buffalo branch manager, advising that Schine would require clearance starting with the 1938–39 season for the Grand Theatre at Rochester over the Strand Theatre in Rochester, and asking for consideration in this respect.

Ex. No. 488; offered and received, R. 2604

Letter of May 15, 1939, from R. W. Maw, Loew Buffalo branch manager, to E. K. O'Shea, Loew district sales manager, with copy to T. J. Connors, Loew Eastern and Southern sales manager. Refers to clearances of Schine in Newark over other towns and in Seneca Falls over Waterloo and in Cortland over several towns, stating that in his opinion they were too long and suggesting reductions in each case.

Ex. No. 491; offered and received, R. 2882

Letter of June 8, 1939, from W. F. Rodgers, Loew general sales manager, to T. J. Connors, Loew Eastern and Southern sales manager, stating that J. Myer Schine had called him and advised him he would reduce his clearance over Clyde, N. Y. from 30 days to 14 days, but he

could not agree to Lyons' playing 14 days after Newark. Rodgers refers to the fact that Loew had sold Lyons on equal availability with Clyde and that Dillard, legal advisor, had suggested that they try to persuade Schine to let the clearance be reduced to 14 days in both situations for the remainder of the season and then next year when Lyons was sold they would not be able to sell them day and date, but Newark would have to get a greater clearance against them than they had against Clyde. Rodgers suggested Connors take it up with Dillard and then Connors might want to talk with Mr. Schine over the phone.

Ex. No. 494; offered and received, R. 2605

Letter of November 7, 1935, from Ralph Pielow, Loew branch manager, to J. E. Flynn, Loew district sales manager, stating that George Lynch, Schine chief film buyer, had mentioned he was going to discuss with Flynn clearance of Ogdensburg over Canton. He says that at the time of signing the contracts, he insisted on 30 days' clearance over Canton for the 1935–36 product in view of the 1934–35 product only having 14 days. He stated that he had advised Lynch that Flynn refused to permit the 30 days, but that Flynn would discuss the matter with them further.

Ex. No. 497; offered and received, R. 2605

Letter of November 30, 1936, unsigned but with initials of dictator RP and title of resident manager of Loew and printed name Mr. Ralph Pielow, Albany, to J. E. Flynn, district manager of Loew, copy for T. J. Connors. Letter states that

George Lynch, Schine chief film buyer, had said he would like to buy a selective contract second run in Amsterdam at the Regent Theatre. The writer reviewed this offer, and Lynch later mentioned he doubted if the theatre would be opened but that he did not want Loew to sell the Orpheum Theatre (the independent). Ralph Pielow thought it was unfair for Lynch to make this request. Pielow set out the proposition on which they could sell the Orpheum Theatre the 1935–36 product. Pielow recommends selling the Orpheum second run.

Ex. No. 499; offered and received, R. 2607

Letter of March 19, 1937, from G. V. Lynch, Schine chief film buyer, to F. Drew, Loew Cleveland branch manager, advising him that Schine had taken over the Princess Theatre in Medina and was in a position to use Loew product.

Ex. No. 500; offered and received, R. 2607

Telegram of March 18, 1937, from Lynch, chief film buyer for Schine, to J. E. Flynn, Loew district sales manager, advising him that Schine had acquired the Princess Theatre in Medina, Ohio, and would like to include that town in Schine's franchise.

Ex. No. 509; offered and received, R. 2882

Interoffice letter of August 2, 1938, from E. W. Aaron, assistant to Loew's general sales manager, to W. F. Rodgers, Loew general sales manager, reviewing their deal with Schine in Medina and stating that Schine had a 350-seat house and that

Mr. Essick's house was a brand new one seating 800 and that some of their products should be playing in that theatre.

Ex. No. 510; offered and received, R. 2883

Interoffice letter of July 29, 1938, from W. F. Rodgers, Loew General sales manager, to T. J. Connors, Loew Eastern and Southern sales manager, stating that Fine had been in to see him with respect to the Medina, Ohio situation and Fine felt they were entitled to at least half of Loew's product. Rodgers asked Connors to investigate this situation.

Ex. No. 518; offered and received, R. 2604

Interoffice letter of September 16, 1932, from C. R. Halligan, RKO Albany branch manager, to E. L. McEvoy, RKO Eastern division sales manager, discussing the Schine circuit deal. He states he is enclosing contracts for the Schine circuit, except for Lake Placid. He says that Schine wants 60 days over a mythical run that might open in various towns, as well as 90 days over Lake Placid Club. He said that it was all right with him because in all those towns Schine had theatres which could be opened second run and the danger of another second run theatre was so slight that Halligan did not hesitate to grant it. Regarding Lake Placid, Halligan had gotten in touch with Marshal Taylor and Harry Thompson who agreed to 14 days' protection over Lake Placid, with exception of July and August when protection would be waived if Lake Placid did not charge a lesser admission than Saranac Lake.

That was agreeable to Lynch, subject to taking it up with Mr. Dodds of Lake Placid, but after a conference, they decided that since several companies had sold them without any protection over Saranac Lake, they would not take a contract with protection. Thompson stated that he had protection with Fox and that if Schine had a contract to the contrary, it was a trick contract. Halligan suggests that McEvoy get in touch with Mr. Peskay since he did not see why RKO should be discriminated against by any circuit regardless of their buying power and that he thought Lynch did have a trick contract for Lake Placid.

Ex. No. 519; offered and received, R. 2606

Letter of October 17, 1933, from C. R. Halligan, Albany branch manager of RKO, to E. L. McEvoy, RKO Eastern division sales manager, re the Palace and Victoria Theatres in Watertown, New York. He states that the attached contracts for these theatres for third and fourth run was a very good deal considering the fact that Schine is buying second run in that town for $22.50. He says Schine had brought about a very chaotic condition by buying second run and leaving four other subsequent runs holding the bag for third run.* He states that with the Schine second run of $22.50 and the third and fourth run of $60, it was almost as much as they got out of first run the previous year. Because of Schine's double feature policy he thought they would be able to sell a fifth run in the town.

*This sentence was stricken by the trial court (R. 3089).

Ex. No. 526; offered and received, R. 2604

Interoffice letter of January 8, 1935, from H. Dixon, RKO Buffalo Branch manager, to E. L. McEvoy, RKO Eastern sales manager, with a copy for H. J. Michalson, stating he was enclosing deals for 1934–35 product for the Palace Theatre in Corning, New York, where they had sold first and second run to Schine. He said that of course all of the pictures would not be played second run by Schine in Corning. He says the contract was written up in an unusual manner but to their advantage and on a rental he believed to be fair considering that their best pictures no doubt would be played first and second run by Schine.

Ex. No. 527; offered and received, R. 2604

Letter of January 10, 1935, from E. L. McEvoy, RKO Eastern sales manager, with a copy to Mr. Michalson, to Harry Dixon, RKO branch manager at Buffalo, advising that before they accepted the deal for the Palace Theatre in Corning he would like to know if Schine at any time had complained about the low admission charged by that theatre and what other major distributors had sold the exhibitor their 1934–35 product.

Ex. No. 528; offered and received, R. 2604

Letter of February 18, 1935, from H. Dixon, RKO Albany branch manager, to E. L. McEvoy, RKO Eastern division sales manager, with copy to J. Michalson, stating that all other companies

were serving the Palace and that he felt the contract would not create any bad feelings with Schine.

Ex. No. 530; offered and received, R. 2603

RKO cancellation notice dated December 11, 1935, for the Palace Theatre of Corning, New York, referring to one picture, and for an explanation, stating that the exhibitor had bought a second run contract but the picture was played first and second run by Schine and the Palace refused to play this subject and since the exhibitor's contract was violated they could not insist upon a play-off. The notice has the signature of H. Dixon as branch manager, and home office approval.

Ex. No. 539; offered and received, R. 2604

Interoffice letter of September 10, 1932, from S. B. Kramer, Warner Cleveland branch manager, to A. W. Smith, Jr., Warner General sales manager, with a copy to R. H. Haines, Warner Cincinnati branch manager, quoting a wire he had received from Lynch, chief film buyer for Schine, to hold a 1931–32–33 product for second run Bellefontaine. Kraemer writes that it was evident that someone was taking over the Opera House in competition with Schine and Kraemer was passing the information along so that when the first run deal was made with Schine, Smith could also handle the second run deal.

Ex. No. 542; offered and received, R. 2607

Interoffice letter of January 12, 1934, from R. S. Smith, Warner Albany branch manager, to A. W. Smith, Jr., Warner General sales man-

ager, copy to R. Smeltzer, Washington, D. C. Warner branch manager, specifying a proposition he had from the State Theatre at Glens Falls, New York. The letter states that the theatre was operated by Fred Mausert and that Schine had 60 days' clearance over the theatre at Schine's second run house. Smith said he thought it was a very good deal and hoped before long that Lynch, Schine's chief film buyer, would break down the 60 day clearance. In Smith's opinion, the clearance setup was all wet but that it would eventually be straightened out.[5]

Ex. No. 546; offered and received, R. 2605

Interoffice letter of June 25, 1934, from R. S. Smith, Warner Albany branch manager, to A. W. Smith, Jr., Warner General Sales Manager, with copy to R. Smeltzer, Washington, D. C. Warner branch manager, stating that Alex Papayanakos of Canton, New York was in to see him and had said that he had to wait 30 days after Ogdensburg for pictures and that they would depreciate because Canton was a college town and that most of the pictures were much older than 30 days as Schine did not play them on release day. Smith said he thought it would make a better condition for all if the clearance could be eliminated.

Ex. No. 549; offered and received, R. 2605

Interoffice letter of August 31, 1934, from R. S. Smith, Warner Albany branch manager, to

[5] This exhibit was strictly construed by the trial court (R. 3089).

R. Mochrie, Assistant to Warner General sales manager, referring to Schine clearances. He says that Little Falls' clearance read 30 days over Dolgeville and that the code authority had already decided that it should be 14 days but that Lynch insisted they go on along on the 30 day basis. That in Watertown Schine wanted 30 days over Lowville as in the preceding year, even though the Board had decided it should be 7 days' clearance at the Avon Theatre, and open booking with the Olympic.

Ex. No. 550; offered and received, R. 2836

Interoffice letter of September 1, 1934, from H. Seed, Warner Buffalo branch manager, to A. W. Smith, Jr., Warner general sales manager. It reviews negotiations respecting shorts with Schine, and states that with respect to subsequent runs in Buffalo, Rochester, Lockport, Oswego, and Corning, he could not get more percentage pictures for features than last year. The reason for the 40 picture contract instead of the 60, second run in those situations, was that Mr. Schine did not want to get into a mess with the Code Authorities as he did the previous year. Schine advised if they did not sell the opposition the other 20 pictures second run, he would try to use them. Mr. Schine refuses to take any part of his entire deal unless his third run contracts stipulate he follow only two specified theatres in Rochester. This is because his deal to take over the Madison and Monroe fell through.

Ex. No. 554; offered and received, R. 2605

Interoffice letter of February 26, 1935, from R. S. Smith, Warner branch manager, to A. W. Smith, Jr., Warner general sales manager, advising that Mr. Kronick, who operated the Orpheum Theatre in Amsterdam, New York had written several letters regarding purchasing second run; that in talking to Lynch, Schine's chief film buyer, Lynch did not want Warner to sell them. Smith said that since Paramount was selling Kronick second run, he could not see why they should not. Smith says that George Lynch had left Warner holding the bag for $1,200 in shorts. Smith said that there were towns smaller than Amsterdam where they had set up second run deals.*

Ex. No. 559; offered and received, R. 2606

Interoffice letter of December 27, 1935, from M. A. Mooney, Warner Cleveland branch manager, to R. Mochrie, assistant to Warner general sales manager, stating he was enclosing a two-year deal for the Colonial theatre in Fostoria, Ohio and recommending its approval.

Ex. No. 560; offered and received, R. 2606

Telegram of March 25, 1936, from A. W. Smith, Jr., Warner general sales manager, to M. A. Mooney, Warner Cleveland branch manager,

*This exhibit was strictly construed by the trial court R. 3089).

stating that if absolutely necessary that Mooney give the Fostoria exhibitor an answer that day, to tell him that the two-year deal had been rejected and that Smith would advise Mooney further the following week.

Ex. No. 561; offered and received, R. 2606

Telegram of April 1, 1936, from R. Mochrie, assistant to Warner general sales manager, to M. A. Mooney, Warner Cleveland branch manager, advising that the Fostoria deal was rejected but that he could offer the exhibitor one half of the product for one season only and that for Mooney's personal information Warner was selling Schine half the product.

Ex. No. 566; offered and received, R. 2606

Warner contract recommendation dated September 16, 1936, with signature of W. J. Brandt, salesman, and M. A. Mooney, manager, referring to the Colonial Theatre at Fostoria, Ohio, enumerating the deal submitted and stating that Anthony Adverse was not included in Schine contracts, that it was felt Warner would get considerably more money from this house than if they sold the Schine situation and asking for approval.

Ex. No. 567; offered and received, R. 1387

Warner contract recommendation for October 21, 1936, same signatures as in Exhibit 566, referring to Civic or Roxy Theatres in Fostoria, Ohio, and Belpic Theatre Corp. as exhibitor. It sets out a picture deal and states that this deal

was sold by Mr. Kalmenson and involved considerable less money than they were getting from the opposition house with which they had been doing business for a number of years.

Ex. No. 574; offered and received, R. 2605

Warner contract recommendation from Albany, New York branch dated June 22, 1937, referring to Plaza Theatre at Malone, New York, with M. Boumansour as exhibitor; sets out deal submitted and states that until about six months ago the theatre was under lease to Schine and kept closed. Boumansour would not renew the lease until the theatre was opened, which Schine refused to agree to. Boumansour opened a theatre and has been running Schine reject pictures first run. He is unable to secure sufficient first run to operate on that policy, forcing him to a second run policy. He has applied to other distributors for second run and to the best of the branch manager's knowledge has not been able to secure the contract. The manager recommended the second run deal set up, stated that he discussed the deal with Kalmenson who suggested it be submitted for approval, but preferred, for the time being at least, to spotbook the pictures. In other words, they would not forward the approved copy of the contracts to the exhibitor unless advised to the contrary.

Ex. No. 597; offered and received, R. 2604

Interoffice letter of December 9, 1940, from Arthur Sachson, Warner official, to R. H. Dunbar, Warner Cincinnati branch manager, advising that

Schine wanted to buy a second run in Harlan, Kentucky, and a fourth run at the Ada Mead, Lexington, Kentucky, and asking that Dunbar look into the situation and let him know what would be a fair proposition. This exhibit has pencilled notations noting that the Ada Mead was a 10¢ theatre and that Warner then had four runs in Lexington.

Ex. No. 598; offered and received, R. 2604

Letter of December 13, 1940, from Warner Cincinnati branch manager Dunbar, unsigned but with his initials, to Arthur Sachson, Warner home office official, with copy to Mr. Smeltzer, refers to Exhibit 597, stating they would appreciate it if Warner could avoid selling second run to Schine in Harlan since they had a very good first run there and that it would hurt him to sell a second run in that situation; that in Lexington they had four runs and that the Ada Mead was a 10¢ theatre and they would rather not get into a contract with that theatre. They would rather spotbook at the Ada Mead since even though he was charging 10¢ it would not interfere with the surrounding theatres and at any time they could withdraw their product if it caused any trouble.

Ex. No. 599; offered and received, R. 2064

Interoffice letter of December 20, 1940, from Arthur Sachson, Warner home office official, to R. H. Dunbar, Warner Cincinnati branch manager, referring to Exhibit 598 and advising they intended to sell Schine second run in Harlan, Kentucky, and that with respect to the Ada Mead they had decided not to sell that run.

Ex. No. 600; offered and received, R. 2604

Letter of December 23, 1940, from R. H. Dunbar, Warner Cincinnati branch manager (unsigned but with initials RKD), to Arthur Sachson, Warner home office official, acknowledging receipt of Exhibit 599, stating that should they negotiate a deal with Schine for second run in Harlan, it would be to their advantage to have it at least 60 days after first run and they would not sell the Ada Mead in Lexington a fifth run.

Ex. No. 601; offered and received, 2604

Letter of December 27, 1940, from Arthur Sachson, Warner home official, to George V. Lynch, Schine chief film buyer, advising him that as to the second run deal for Harlan, Ky., it was OK to book on the basis of 60 days after first run and that the next time he saw Lynch he would set up a deal for him.

Ex. No. 653; offered and received, R. 1527

Letter of July 28, 1933, from W. F. Rodgers, Loew general sales manager, to Peter Graffiades, Palace Theatre, Lockport, N. Y., advising him that Loew could not offer him their 1933–34 product because in his negotiations with the Schine interests it was likely that they would have to give them consideration in Lockport as well as elsewhere, since Loew was not in a position to jeopardize Schine's business from Schine's other situations and also because for a number of years Schine had been a very representative account.

Ex. No. 662; offered and received, R. 2604

Columbia alteration of contract form, dated 12/10/35, from Cleveland branch office, covering the Southern Theatre in Bucyrus, operated by an independent. Lists a change in terms for two pictures and states that the exhibitor was forced to change his policy, due to Schine opposition having all major product under contract, and that the exhibitor would have to make four changes a week instead of three, as he was unable to buy major product second run.

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